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THE NORTH AMERICAN ENERGY INFRASTRUCTURE ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY AND POWER

OF THE

COMMITTEE ON ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

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THE NORTH AMERICAN ENERGY INFRASTRUCTURE ACT

TUESDAY, OCTOBER 29, 2013

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ENERGY AND POWER,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 10:03 a.m., in room 2123 of the Rayburn House Office Building, Hon. Ed Whitfield (chairman of the subcommittee) presiding.

Members present: Representatives Whitfield, Scalise, Shimkus, Pitts, Terry, Burgess, Latta, Cassidy, Olson, Gardner, Pompeo, Kinzinger, Griffith, Barton, Upton (ex officio), McNerney, Tonko, Yarmuth, Green, Barrow, Matsui, Christensen, Castor, Dingell (ex officio), and Waxman (ex officio).

Staff present: Nick Abraham, Legislative Clerk; Gary Andres, Staff Director; Charlotte Baker, Press Secretary; Mike Bloomquist, General Counsel; Sean Bonyun, Communications Director; Matt Bravo, Professional Staff Member; Allison Busbee, Policy Coordinator, Energy and Power; Patrick Currier, Counsel, Energy and Power; Tom Hassenboehler, Chief Counsel, Energy and Power; Jason Knox, Counsel, Energy and Power; Brandon Mooney, Professional Staff Member; Chris Sarley, Policy Coordinator, Environment and Economy; Jeff Baran, Democratic Senior Counsel; Phil Barnett, Democratic Staff Director; Greg Dotson, Democratic Staff Director, Energy and Environment; Caitlin Haberman, Democratic Policy Analyst; Elizabeth Letter, Democratic Press Secretary; and Alexandra Teitz, Democratic Senior Counsel, Environment and Energy.

OPENING STATEMENT OF HON. ED WHITFIELD, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF KENTUCKY

Mr. WHITFIELD. I would like to call this hearing to order this morning.

And today we are having a hearing on H.R. 3301, the North American Energy Infrastructure Act, which was introduced by the chairman of the full committee, Fred Upton, and Mr. Green of Texas.

Anyone that has read any newspaper recently or any international articles is certainly very much aware of the fact that there has been an energy transformation taking place in America. I read an article recently about the World Economic Forum in Davos, Switzerland, and it was talking about how business leaders

throughout Europe, Asia, and South America were all very much concerned about this energy transformation taking place in America and what it means for global competitiveness.

And many of you may have read recently where one of the Energy Information Agencies, not only the one in the U.S., but the international agency also indicated that the United States would be the world's top producer of petroleum and natural gas in 2013, surpassing both Russia and Saudi Arabia. And of course we continue to be one of the world's leading producers and exporters of coal. As a matter of fact, the coal export market last year out of the United States, 45 percent of that market went to Europe.

So the energy boom is having a dramatic economic impact, creating thousands of new jobs and paving a path toward a brighter energy and fiscal future, but energy supply alone is not sufficient to achieve North American energy independence. We must also have in place the energy infrastructure necessary to deliver affordable and reliable energy across our northern and southern borders. This means being able to site and construct oil and gas pipelines and electric transmission lines to carry energy and electrons across the borders of the U.S., Canada, and Mexico.

Now, as many of you know, the Constitution very clearly states that the Congress has the authority to regulate commerce, and that up until this time Congress has really not taken action, and so the regulation of obtaining permits and building transmission lines, oil and natural gas pipelines, have fallen upon the Executive Orders of the President of the United States. So this legislation before us today will modernize and reform the approval process for energy infrastructure projects across the borders of the United States.

And, well, I had been asked to yield some time to Mr. Barton, but I see he is not here. Did Mr. Burgess want some time?

Mr. UPTON. You know, I can go now, and if he comes back—is that all right?

Mr. WHITFIELD. Well, I tell you what, I will just finish my statement, Mr. Upton, and then I will go to McNerney and then give you your entire 5 minutes.

But I do want to thank Chairman Upton and Congressman Green for their work on this legislation. It is very important. I am proud to be an original cosponsor, and I think that we have broad bipartisan support to provide more transparency, a more efficient mechanism to permit transmission lines and gas pipelines between the U.S., Canada, and Mexico.

[The prepared statement of Mr. Whitfield follows:]

PREPARED STATEMENT OF HON. ED WHITFIELD

Today's hearing is on H.R. 3301, the "North American Energy Infrastructure Act," a bipartisan bill authored by Chairman Fred Upton and Representative Gene Green.

Over the last several months, this committee has received compelling testimony detailing how the United States has entered a new era of energy abundance. New technologies and American innovation are unlocking vast amounts of previously untapped domestic energy resources, meaning greater access to affordable and reliable energy for all Americans. In fact, the Energy Information Administration recently reported that the U.S. will be the world's top producer of petroleum and natural gas in 2013, surpassing both Russia and Saudi Arabia. And we continue to be one of the world's leading producers and exporters of coal.

This energy boom is having a dramatic economic impact, creating thousands of new jobs and paving a path toward a brighter energy and fiscal future. A recent study from global consulting firm IHS concluded that domestic energy production now supports 1.2 million jobs directly or indirectly, and that the number is expected to grow to 3.3 million by 2020. The study also found that domestic oil and gas production added "more than $1,200 last year to the discretionary income of the average U.S. family" and "new energy's contribution to U.S. families' disposable incomes will hit $2,000 per household per year by 2015." During this time of stagnating household incomes, this should give us all hope.

The energy revolution bodes well not only for U.S. economic and security interests, but it also offers significant advantages for our North American allies: Canada and Mexico. Based on current projections, many analysts believe that the U.S., Canada, and Mexico could finally achieve North American energy independence by the end of the decade.

But energy supply alone is not sufficient to achieve North American energy independence. We must also have in place the energy infrastructure necessary to deliver affordable and reliable energy across our northern and southern borders. This means being able to site and construct oil and gas pipelines and electric transmission lines to carry energy and electrons across the borders of the U.S., Canada and Mexico. Additional infrastructure will create a more efficient North American energy market. For example, the reason natural gas is currently being flared is simply because there is insufficient infrastructure to move it; nor is there enough of a domestic demand. H.R. 3301 is part of the solution to that problem.

The legislation before us today will modernize and reform the approval process for energy infrastructure projects that cross the borders of the United States. As we have witnessed in previous contexts, trying to get approval for energy projects that cross our national borders has become an increasingly lengthy, confusing and politically-influenced process. H.R. 3301 will bring much-needed certainty and fairness to the process for constructing cross-border projects for all types of energy infrastructure-whether it be oil or gas from the Bakken, or new hydro or solar generation from Canada or Mexico. Its passage will help to encourage investment in new job-creating energy infrastructure needed to transport North America's growing energy supplies.

I want to thank Chairman Upton and Congressman Green for their work on H.R. 3301. I am proud to be an original co-sponsor of this legislation, and I am pleased to see that it already has broad bipartisan support. Moving forward, it is my hope that all Energy and Commerce Committee members will be able to support this important legislation.

Mr. WHITFIELD. At this time I would recognize the gentleman from California, Mr. McNerney, for 5 minutes.

OPENING STATEMENT OF HON. JAY MCNERNEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. MCNERNEY. Thank you, Mr. Chairman. I appreciate you holding this hearing today and I appreciate the witnesses for their time and energy on this issue.

Our Nation is producing more oil and gas than it has in years, and I believe that the natural gas can have some real benefits in terms of our national security, our manufacturing, and our employment in general. But we must ensure that this production does not worsen global warming, result in groundwater contamination, or negatively impact public health. These projects must be done safely using the best technology possible because the well-being of the public and the environment must remain a priority. I believe that this can be accomplished with an efficient permitting process.

We often hear about business certainty, whether it is streamlining environmental reviews or the regulatory process. I have had to deal with these issues myself while working in the wind energy sector and know firsthand how a lack of clear direction can negatively affect businesses. H.R. 3301, the North American Energy In-

frastructure Act, aims to revise the current approval process for cross-border oil pipelines, natural gas pipelines, and electric transmission lines. I think there is an argument that Congress should act to set the rules of the road for these projects rather than have the processes determined primarily by Executive Orders.

But if we are going to have a discussion about revising permitting processes, we need to understand what the problems are and what we are going to do to save the public interest. Like my colleagues who have introduced 3301, I share a belief that a change in project ownership shouldn't necessarily be a major roadblock during the permit process. I also believe that projects should be reviewed in a timely yet thorough manner and that more consistent guidelines could be beneficial.

But I do have significant concerns about the bill. I don't think the case has been made for why projects that are not in the public interest should be approved. We should make sure that cross-border energy projects are in the broad public interest, receive a thorough environmental review, and provide adequate opportunities for public comment and participation. We shouldn't have a rushed process that isn't going to provide meaningful review.

I hope today's hearing will give us a chance to examine some of these issues. We need to get to the facts and understand the consequences of the changes proposed in this legislation. I look forward to hearing from the witnesses on these issues, and I would now like to yield to my colleague from Texas, Mr. Green, one of the bill's co-authors.

OPENING STATEMENT OF HON. GENE GREEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. GREEN. Thank you. And I would like to thank my California colleague and ranking member for allowing me to speak.

I appreciate the opportunity because after reading some of the testimony, there seems to be some confusion about the intent of this bill and what the bill actually does. H.R. 3301 would only impact the act of reviewing and granting a cross-border presidential permit. So what does that mean? The bill only addresses the permit that a company needs to import or export the commodity. It does not affect all the permitting required to site or construct the project. In fact, Section 3(f) specifically keeps in force without change all Federal lands, environment, and wildlife statutes and requirements for projects in the U.S. such as the Clean Water Act, the Clean Air Act, the Endangered Species Act, the Mineral Leasing Act, the Rivers and Harbors Act, the Fish and Wildlife Coordination for Fish and Wildlife Service Consultation, the National Wildlife Refuge System Act, Administration Act, the Wilderness Act, the Federal Land Policy Act and Management Act, the National Environmental Policy Act for projects triggering a need for review based on actions under the above statutes. All permitting requirements under these statutes remain in addition to any State laws that govern these projects as well.

H.R. 3301 simply excludes the act of issuing a cross-border permit from triggering a NEPA review. Any of the environmental laws left in place could still trigger a NEPA review under the current criteria. I also think it is important to recognize that the current

ad hoc Executive Order process that governs the presidential permitting process could change at any time.

So my colleagues that may have issues with the text, let's talk about it, but I personally would always rather have Congress develop a statute that reflects our diverse constituencies than have the President regulate by Executive Order. This bill would implement a fair and standardized approval process that everyone understands, and I look forward to testimony this morning and again thank the chairman for allowing me to be here and work on the bill. Thank you.

Mr. WHITFIELD. The gentleman yields back.

At this time I recognize the chairman of the full committee and one of the authors of the bill, Mr. Upton of Michigan, for 5 minutes.

OPENING STATEMENT OF HON. FRED UPTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. UPTON. Well, thank you, Mr. Chairman, and I hope your voice gets better. I am not sure who it is over there that is talking, but today, we are going to examine a critical component in the effort to construct the architecture of abundance to realize our Nation's newfound energy potential. This bipartisan North American Energy Infrastructure Act is a bill that fills in the gaps created by Executive Orders and attempts to add much-needed regulatory certainty to energy infrastructure projects that cross the Canadian or Mexican border.

And I would like to thank my friend and colleague Mr. Green for cosponsoring this bill and look forward to working across the aisle on this important measure.

The most significant energy storyline in recent years has been the unexpected increase in North American oil and natural gas production. Long-held assumptions of permanent declines in North American energy output have been turned upside down by impressive production increases dating back to 2007. The Energy Information Administration and others expect the growth in oil and gas output to continue rising in the years ahead.

However, the Federal regulatory regime has failed to keep up with this dynamic advancement. Many new infrastructure projects, including oil and gas pipelines and electric transmission lines, will certainly be needed to transport this growing energy abundance, including projects that cross our north and south borders.

But these projects and the jobs and economic growth that they will generate can get delayed for years on end. The time has come for Congress to provide certainty and rightfully assert its role in deciding how these projects should be allowed to cross our Nation's borders.

We have all heard about the Keystone XL pipeline expansion project to bring more Canadian oil to the American market. We have also heard about this project's nearly 5-year regulatory delay, but Keystone is not—it is not—the issue today. There are many other upcoming cross-border projects, large and small, that may be subject to similar delays. We also have projects that have been in existence for decades that are being left in regulatory limbo over minor issues such as change in ownership. This is only dissuading

industry and investors, both here and abroad, from entering our market.

For those concerned about the environmental and safety standards applicable to these projects, the good news is that none of these standards are changed by the bill. This bill simply brings uniformity to current administration policy—that a cross-border decision does not in and of itself trigger a NEPA determination.

Under this bill, a 500-mile pipeline or a transmission line carrying new hydro from Canada or solar from Arizona that extends across the Canadian or Mexican border would be subject to the same regulatory scrutiny as a similar project that remained within the boundaries of the U.S., but it would no longer be subject to unlimited additional delays because of the border crossing.

Our energy policies should seek to safely and responsibly maximize our energy abundance and minimize pain to the people's pocketbooks when it comes to energy prices, and this bipartisan legislation is an important step forward as we work to develop the architecture of abundance to achieve North America's energy future.

I yield the balance of my time to my friend Mr. Barton.

[The prepared statement of Mr. Upton follows:]

PREPARED STATEMENT OF HON. FRED UPTON

Today, we examine a critical component in the effort to construct the architecture of abundance to realize our Nation's newfound energy potential. The bipartisan "North American Energy Infrastructure Act" is a bill that fills in the gaps created by executive orders and attempts to add much-needed regulatory certainty to energy infrastructure projects that cross the Canadian or Mexican border. I would like to thank my friend and colleague Gene Green for co-sponsoring this bill, and look forward to working across the aisle on this important measure.

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However, the Federal regulatory regime has failed to keep up with this dynamic advancement. Many new infrastructure projects, including oil and gas pipelines and electric transmission lines, will be needed to transport this growing energy abundance, including projects that cross our Northern or Southern borders. But these projects, and the jobs and economic growth they will help generate, can get delayed for years on end. The time has come for Congress to provide certainty and rightfully assert its role in deciding how these projects should be allowed to cross our Nation's borders.

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prices. This bipartisan legislation is an important step forward as we work to develop the architecture of abundance to achieve North America's energy future.

OPENING STATEMENT OF HON. JOE BARTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. BARTON. Thank you, Chairman Upton, and my condolences to Chairman Whitfield on his cold or laryngitis.

We appreciate the hearing today on H.R. 3301, the North American Infrastructure Act. Everybody has already said basically what I was going to say. I think the important thing to realize is that this only deals with the permitting process across international borders. It does not change any existing permitting process on projects within the United States.

I think it is also important to point out that this is a very bipartisan bill. There are a number of Democrat cosponsors on the bill. I am proud to be one of the Republican cosponsors. So I think this is a commonsense approach to an issue and interestingly, we are moving it at a time when we are looking more at exporting American energy as opposed to importing American energy, and I think that is a good thing.

Mr. BARTON. With that, Mr. Chairman——

Mr. SHIMKUS. Mr. Barton?

Mr. BARTON. I yield to Mr. Terry.

Mr. SHIMKUS. Oh, OK.

Mr. BARTON. I am sorry.

OPENING STATEMENT OF HON. LEE TERRY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEBRASKA

Mr. TERRY. Thank you. And I just want to say how pleased I am about this bill, and it will allow for a more streamlined process for oil and natural gas pipelines to cross our northern and southern borders, as well as electric transmission lines. And I am no stranger to this issue about cross-border pipelines, and this is at least similar in theory to one of the bills that we have passed to move the jurisdiction to those agencies that actually have expertise in this area. And so can I yield the last 11 seconds to Mr. Shimkus?

[The prepared statement of Mr. Terry follows:]

PREPARED STATEMENT OF HON. LEE TERRY

Thank you, Mr. Chairman.

I am pleased to join Chairman Upton and Congressman Green in this bipartisan effort to continue to make North America Energy Independent.

This bill—the North America Energy Infrastructure Act—will allow for a more streamlined process for oil and natural gas pipelines to cross both our northern and southern border as well as electric transmission lines.

I am no stranger to the issue of problems with cross-border pipelines. As the House lead on the Keystone XL, I am pleased that my colleagues have brought forward a comprehensive, forward-looking bill.

We should never have another Keystone-type delay. Energy is the cornerstone of any vibrant economy. We must allow oil, natural gas and electricity to flow freely among our countries.

New uses for natural gas will fuel our economy. If not, we have to ask ourselves, Who will leapfrog the U.S. as the most dynamic economy?

This bill is a good step in the right direction to remain the leader of the pack.

Mr. SHIMKUS. Thank you. And I am sorry to jump in, but I wanted to make an introduction: In the back row in the committee room is Arbenita Mjekiqi, Senior Officer for Internal Market at Ministry of European Integration working for the Department of Economic Criteria, and she is from Kosovo. So she is following me today. I would like for us to give her a warm welcome. Thank you.

Mr. WHITFIELD. The gentleman yields back. The gentleman's time has expired, and we do welcome the lady from Kosovo. We appreciate your joining us today.

At this time I would like to recognize the gentleman from California, Mr. Waxman, for 5 minutes.

OPENING STATEMENT OF HON. HENRY A. WAXMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. WAXMAN. Thank you very much, Mr. Chairman.

Climate change is the biggest energy challenge we face. Before approving a multibillion-dollar energy infrastructure project that will last for decades, we need to evaluate its climate impacts. That is the standard the President rightly set in June. But this test is a significant obstacle for tar sands pipelines because they would carry the dirtiest fuel on the planet.

Over the last few years, House Republicans have repeatedly tried to short-circuit the process and mandate approval of the Keystone XL tar sands pipeline. The bill we are considering today goes even further. It creates a new process to rubberstamp every pending and future tar sands pipeline.

The premise of the Upton bill is that tar sands pipelines should be approved quickly with no Federal environmental review, no public comment, and no consideration of important factors like climate change or even safety. Under this approach, legitimate concerns cannot even be raised. Mr. Chairman, not only is your voice strained and hard to come forward, everybody's voices will be restrained. That is the wrong approach for making decisions about controversial projects.

Keystone XL is a multibillion-dollar pipeline that will carry tar sands sludge. The oil industry financial analysts and Canadian Government officials say this pipeline is critical to realizing the oil industry's plan to triple tar sands production. Well, environmental groups say the pipeline will lead to a massive increase in carbon pollution. Over one million Americans filed comments. One million Americans had their voices heard, Mr. Chairman. In a democracy, we need a permitting process that allows for public input. This bill does exactly the opposite.

The July 2010 Enbridge pipeline spill in Marshall, Michigan, taught us that tar sands spills are much harder to clean up than regular oil spills. Almost $1 billion has been spent and they are still cleaning up the Kalamazoo River over 3 years later. Enbridge wants to expand another tar sands pipeline from Canada through North Dakota, Minnesota, and Wisconsin. But if this bill becomes law, the permitting agency couldn't even consider pipeline safety issues when deciding whether to approve that controversial pipeline.

In the Northeast, another divisive pipeline project would carry tar sands oil from Canada through New Hampshire and Vermont to Portland, Maine, where it would be loaded onto tankers. The project wouldn't require any approval at all under this bill's new permitting process. This bill virtually guarantees that Keystone XL and the other controversial pipelines with pending applications are approved within 2 years. It should really be called the Zombie Pipeline Act. Under this bill, even if the administration rejects KXL because it is not in the public interest, KXL could rise from the grave and reapply. It would then be rubberstamped under the new process.

The Upton bill is not limited to oil pipelines. It also applies to cross-border natural gas pipelines and electric transmission lines. This bill would prevent permitting agencies from considering factors such as safety, electric reliability, engineering, and environmental impacts when deciding whether to approve these projects. Energy projects that are not in the public interest would be rubberstamped.

And the bill would allow for unlimited exports of liquefied natural gas through Canada and Mexico with absolutely no controls or conditions. That is why domestic manufacturers like Dow, Alcoa, and Nucor have criticized the bill.

Faced with the threat of dangerous climate change, we have a responsibility to think through the impacts of proposed energy infrastructure projects. That means thorough environmental reviews and meaningful public participation. But this bill prohibits consideration of climate change and other important impacts. Mr. Chairman, that is not a responsible approach.

Mr. WHITFIELD. Thank you, Mr. Waxman.

That concludes the opening statements, so we have with us on the first panel Mr. Jeff Wright, who is the director, Office of Energy Projects, over at the Federal Energy Regulatory Commission.

And, Mr. Wright, thanks for joining us today, and you are recognized for 5 minutes for an opening statement.

STATEMENT OF JEFF C. WRIGHT, DIRECTOR, OFFICE OF ENERGY PROJECTS, FEDERAL ENERGY REGULATORY COMMISSION

Mr. WRIGHT. Chairman Whitfield, members of the subcommittee, again, my name is Jeff Wright, and I am the director of the Office of Energy Projects at the Federal Energy Commission. The Commission is responsible under the Natural Gas Act for authorizing the construction and operation of interstate natural gas pipeline and storage projects and for the construction and operation of facilities necessary to permit either the import or export of natural gas. The Commission conducts both a non-environmental and an environmental review of the proposed facilities. The environmental review, pursuant to the National Environmental Policy Act of 1969, or NEPA, is carried out with the cooperation of numerous Federal, State, and local agencies, and with the input of other interested parties.

I will now turn to the proposed legislation. Section 3(b)(1) of the bill states that the Commission shall approve a project within 120 days of receipt of a request to construct and operate border facili-

ties unless the project is not in the national security interests of the United States, and that under proposed Section 3(b)(3), approval will not be a major Federal action under NEPA. This would differ substantially from the Natural Gas Act in that the proposed Act does not make any provision for procedures such as public notice, public comment, issuance of an order supporting a Commission decision, rehearing, or judicial review in conjunction with the Commission's consideration of an application. A 120-day deadline would not permit construction of an adequate record, enable important agency consultation, or allow for meaningful public interaction in arriving at a decision. The proposed language could be read as giving the Commission no discretion in the issuance of an authorization unless there are national security concerns.

The Commission, by statute, is the lead agency in the approval of interstate pipeline facilities in the U.S. and at its borders. However, depending upon the location of the proposed facilities, there are other Federal statutes that are administered by Federal and State agencies that require authorizations prior to the Commission's approval. Even if the Commission issues conditional approval, construction cannot begin until the other Federal authorizations are issued.

Further, border facilities, when considered on their own, do not usually constitute a major project. Nevertheless, a finding of no significant environmental impact still requires the Commission staff to conduct a NEPA analysis to be able to make such a conclusion. In addition, many border facilities require Commission-jurisdictional upstream pipeline facilities to be constructed.

Typically, Greenfield pipeline construction requires an environmental impact statement since there will be significant environmental disturbance. Under NEPA, an agency is charged with reviewing the cumulative impacts of a project. The related upstream facilities cannot be considered apart from the related border facilities. Separate consideration would invite charges of project segmentation and could result in a court reversal of a Commission decision. Therefore, the proposed 120-day approval process would hinder the ability of the Commission to consider stakeholder concerns and prevent the Commission from conducting a thorough analysis of a project involving border facilities, resulting in a decision whose sustainability is questionable.

Also, the Commission is not equipped to make decisions on the national security interests of the U.S. Currently, the presidential permit process solicits the opinions of the Secretaries of State and Defense regarding the import of gas from or export of gas to Canada or Mexico. If there were national security concerns, they would be expressed by State and Defense as part of the process. However, Section 3 of the proposed legislation would eliminate the need for a permit. Even with the elimination of the presidential permit, the Commission would still need to consult with State and Defense. In addition, agency consultation may be necessary with, for example, the Department of Homeland Security to further determine the national security interests of the U.S. regarding a proposal to construct border facilities.

Section 5 of the proposed bill would repeal Section 202(e) of the Federal Power Act and make other conforming changes. Now, this

is not within my area of expertise. However, I understand from discussions with others at the Commission that repeal could have a potentially adverse effect on the Commission's ability to ensure nondiscriminatory open access transmission service over the U.S. transmission grid.

My prepared testimony suggests two remedies that if this bill were to become law should be considered to ensure that transmission service in foreign commerce continues to maintain its nondiscriminatory open access properties. I would suggest that inquiries on this topic could be adequately addressed by the submission of questions for the record.

In conclusion, the current siting process for natural gas facilities, including those facilities at the U.S. border with Canada and Mexico, have resulted in a significant increase on the natural gas infrastructure in the U.S. meeting the needs and answering the concerns of all stakeholders with decisions that are fair, thorough, and legally sustainable. The proposed legislation raises questions as to conflicting Federal authorities and procedures that will be followed to authorize natural gas border facilities.

This concludes my remarks. I would be pleased to answer any questions you may have.

[The prepared statement of Mr. Wright follows:]

Testimony of

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Before the Committee on Energy and Commerce
Subcommittee on Energy and Power

United States House of Representatives

Hearing on H.R. 3301

"North American Energy Infrastructure Act"

October 29, 2013

Mr. Chairman and Members of the Subcommittee:

My name is Jeff Wright and I am the Director of the Office of Energy Projects (OEP) at the Federal Energy Commission (FERC or Commission). I appreciate the opportunity to appear before you to discuss H.R. 3301, entitled the "North American Energy Infrastructure Act" (Act). As a member of the Commission's staff, the views I express in this testimony are my own, and not those of the Commission or of any individual Commissioner.

I. Background

The Commission is responsible under section 7 of the Natural Gas Act (NGA) for authorizing the construction and operation of interstate natural gas pipeline and storage projects and under section 3 of the NGA for the construction and operation of facilities necessary to permit either the import or export of natural gas by pipeline or by sea (via liquefied natural gas). As part of those responsibilities, the Commission conducts both a non-environmental and an environmental review of the proposed facilities. The non-environmental review focuses on the engineering design, and rate and tariff considerations. The environmental review, pursuant to the National Environmental Policy Act (NEPA), is carried out with the cooperation of numerous federal, state and local agencies, and with the input of other interested parties. The Energy Policy Act of 2005 (EPAct 2005) amended several sections of the NGA to provide additional authorities and responsibilities to the Commission related to natural gas facilities. In particular, EPAct 2005 states that the Commission is the lead federal agency for

coordinating all applicable Federal authorizations and for the purpose of NEPA compliance. As the designated lead agency, the Commission, which is ultimately responsible for making the overall public interest determination, coordinates the regulatory review among federal agencies and maintains a single, consolidated federal record for any subsequent appeals or judicial reviews.

To streamline the permitting process, FERC establishes an expeditious publicly-noticed schedule for all decisions or actions taken by other federal agencies and/or state agencies delegated with federal authorizations. This includes federal authorizations issued by both federal and state agencies under the Clean Water Act, the Clean Air Act, the Coastal Zone Management Act, and others.

There are several distinct phases to the review process for interstate natural gas facilities under the jurisdiction of FERC:

- Project Preparation: the project sponsor defines customers and a proposed project prior to formally engaging with FERC;
- Pre-Filing Review: FERC staff begins work on the environmental review and engaging with stakeholders with the goal of resolving issues before the filing of an application;
- Application Review: the project sponsor files an application with FERC under NGA section 7 for interstate pipeline and storage facilities, and FERC staff completes and issues the environmental document, and analyzes the non-environmental aspects of projects related to the public interest determination; and

- Post-Authorization Compliance: FERC staff works with the project sponsor and stakeholders to ensure compliance with any conditions to FERC approval prior to the commencement of and during construction.

The Commission is committed to making the regulatory process as short as possible while also providing public notice and opportunity for hearing before acting, to explain the reasons for the Commission's decision, and, authorize only those projects that are determined to be in the public interest. Since 2000, this process has led to the certification of nearly 16,000 miles of interstate natural gas transmission pipeline and almost 1.2 trillion cubic feet of interstate storage capacity.

II. The North American Energy Infrastructure Act

The proposed legislation, as it pertains to the Commission, requires the Commission to approve new pipeline projects at the national boundary of the U.S. to either export or import natural gas to or from Canada or Mexico within 120 days of receiving the request for approval of the project (unless the proposal is not in the national security interests of the U.S.). The Act also proposes to eliminate the requirement for a Presidential Permit for a U.S. natural gas facility at either the Canadian or Mexican border. The Act states that this proposed legislation would not apply to any border facility that: is currently in operation, has already received a Presidential Permit, or has previously been approved pursuant to this proposed legislation. Further, the Act states that no approval or Presidential Permit would be required for the following modifications of the aforementioned facilities:

reversal of flow direction, change in ownership, volume expansion, downstream interconnection, or adjustments to maintain flow. Finally, the proposed legislation would repeal section 202(e) of the Federal Power Act (FPA).

I have and will continue to support the timely approval of the facilities necessary for the import or export of natural gas from or to Mexico and Canada. The Commission's review process is thorough, efficient, and has resulted in substantial additions to the nation's natural gas infrastructure, especially the pipeline facilities necessary to import or export natural gas. These results have been substantiated by a thorough and robust environmental analysis under the NEPA. I will now turn to the specific provisions of the proposed legislation.

Section 3(b)(1) of the bill states that the Commission shall approve the project within 120 days of receipt of a request to construct and operate border facilities – unless the project is not in the national security interests of the U.S. – and that, under proposed section 3(b)(3), approval "shall not be construed to constitute a major Federal action" under NEPA. I note that this authorization proposed would differ substantially from the NGA in that the proposed Act does not make any explicit provision for procedures such as public notice, public comment, issuance of an order supporting a Commission decision, rehearing, or judicial review in conjunction with the Commission's consideration of an application. A 120-day deadline would not permit construction of an adequate record, enable important agency consultation, or allow for meaningful public interaction in arriving at a decision. In fact, the proposed language could be read

as giving the Commission no discretion in the issuance of an authorization to construct border facilities, unless there are national security concerns. The Commission, by statute, is the lead agency in the approval of interstate pipeline facilities in the U.S. and at its borders; however, depending upon the location of the proposed facilities, there are other federal statutes that are administered by federal and state agencies that require authorizations prior to the Commission's approval. Even if the Commission issues conditional authorization, construction cannot begin until the other federal authorizations are issued.

Further, the proposed legislation states, in proposed section 3(b)(3) that approval of border facilities "shall not be construed to constitute a major Federal action for purposes of the National Environmental Policy Act of 1969." Border facilities when considered on their own do not usually constitute a major project. Nevertheless, a finding of no significant environmental impact (the conclusion of an environmental assessment as opposed to an environmental impact statement which is pursued when there is a finding of significant environmental impact) still requires the Commission staff to conduct an environmental analysis to be able to make such a conclusion. In addition, many border facilities require Commission-jurisdictional pipeline facilities, pursuant to section 7 of the NGA, to be constructed. Typically, greenfield pipeline construction requires an environmental impact statement since there will be significant environmental impact. Under NEPA, an agency is charged with reviewing the cumulative impacts of a project. In such a situation, the related NGA section 7 facilities cannot be considered apart

from the related border facilities. To consider these facilities separately would invite charges of project segmentation and could result in a court reversal of a Commission decision. Therefore, the proposed 120-day approval process would negate the ability of the Commission to consider stakeholder concerns and severely curtail the Commission's ability to conduct a thorough analysis of a project involving border facilities, resulting in a decision whose sustainability is questionable.

Also, the Commission is not equipped to make decisions on the national security interests of the U.S. regarding border facilities. Currently, the Presidential Permit process solicits the opinions of the Secretaries of State and Defense regarding the import of gas from or export of gas to Canada or Mexico. If there were national security concerns, these concerns would be expressed by the Departments of State and Defense as part of the Presidential Permit process; however, section 3(c) of the proposed legislation would eliminate the need for a Presidential Permit. Even with the elimination of the need for the Presidential Permit, the Commission would still need to consult with the Departments of State and Defense. In addition, agency consultation may be necessary with, for example, the Department of Homeland Security, to further determine the national security interests of the U.S. regarding a proposal to construct border facilities.

With respect to section 5 of the bill, which would repeal section 202(e) of the FPA, 16 U.S.C. § 824a(e), and make conforming changes to other sections of the FPA, while not within my area of expertise, I understand from discussions

with others at the Commission that repeal could have an unintended potentially adverse effect on the Commission's ability to ensure non-discriminatory open access transmission service over the U.S. electric transmission grid.

The Commission's authority under the FPA, as relevant here, currently extends to the "transmission of electric energy in interstate commerce," and "over all facilities for such transmission." 16 U.S.C. § 824(b)(1). In April 1996, the Commission adopted regulations that provide that all transmission service in interstate commerce must be non-discriminatory open access transmission service, 18 C.F.R. § 35.28, and that requirement has paved the way for the wholesale power markets and the merchant generation industry the U.S. has today.

Transmission between the U.S. and Canada and Mexico is considered to be transmission of electric energy in foreign commerce and, as a consequence, such transmission service and the facilities for such service were not originally subject to the Commission's requirement of non-discriminatory open access transmission service. Transmission providers that owned or controlled the transmission lines between the U.S. and Canada and Mexico, i.e., facilities in foreign commerce, thus could discriminate in providing service, and even deny service outright. Foreign generators could be denied access to United States markets, or be required to pay discriminatory charges to access those markets, and U.S. generators could be denied access to foreign markets, or be required to pay discriminatory charges to access those markets.

In Delegation Order No. 00-004.00A, in particular section 1.3, the Secretary of Energy – relying in part on section 202(e) of the Federal Power Act – has delegated to the Commission the authority "to regulate access to, and the rates, terms, and conditions for, transmission services over permitted international electric transmission facilities to the extent the Commission finds it necessary and appropriate to the public interest…for the sole purpose of authorizing the Commission to take actions necessary to implement and enforce non-discriminatory open access transmission service over the United States portion of those international electric transmission lines required by the Secretary [of Energy] to provide such service." Through this Delegation Order, the Secretary of Energy has vested the Commission with the authority to do what the Commission otherwise was not authorized to do: ensure non-discriminatory open access transmission over electric transmission facilities in foreign commerce. Repealing section 202(e) of the Federal Power Act, however, potentially calls into question the continuing validity of this Delegation Order.

To address this possibility, if Congress chooses to repeal section 202(e) of the Federal Power Act, it may be appropriate to adopt in its place statutory language – in section 3 of the bill, or elsewhere – that would either: (1) explicitly vest the Commission with the same authority that the Secretary of Energy has delegated to the Commission, that is, the authority to ensure that transmission service in foreign commerce is non-discriminatory open access transmission service; or (2) given the bill's granting, in section 3, to the Secretary of Energy the

authority to approve the construction or operation of electric transmission facilities that cross the national boundary of the United States, explicitly authorize the Secretary of Energy to again delegate to the Commission the authority to ensure that transmission service in foreign commerce is non-discriminatory open access transmission service.

III. Conclusion

The current siting process for natural gas facilities, including those facilities at the U.S. border with Canada and Mexico, has resulted in a significant increase in the natural gas infrastructure in the U.S. meeting the needs and answering the concerns of all stakeholders with decisions that are fair, thorough, and legally sustainable. The proposed legislation raises questions as to conflicting federal authorities and procedures that would be followed to authorize natural gas border facilities.

Regarding the repeal of section 202(e) of the FPA, I have suggested two remedies that, if this bill were to become law, should be considered to ensure that transmission service in foreign commerce continues to maintain its non-discriminatory open access properties.

Mr. WHITFIELD. Thank you very much, Mr. Wright. And I would like to just remind the Members, although all of you are always so responsive anyway, that each of us will be given 5 minutes for everybody. And the reason I want to ask you to just watch the clock today is that there is another hearing scheduled in this hearing room today at one o'clock. So we want to give everybody the opportunity to ask questions and so I would just ask you to keep that in mind.

And with that, I would like to recognize myself for 5 minutes for questions.

Now, Mr. Wright, how long has FERC had the authority to make these decisions about natural gas pipelines?

Mr. WRIGHT. All natural gas pipelines or just border facilities?

Mr. WHITFIELD. The border facilities.

Mr. WRIGHT. I believe since the inception of the Natural Gas Act in 1938. Siting authority came about in 1945.

Mr. WHITFIELD. OK. 1938. And of course FERC has no jurisdiction over transmission lines or oil pipelines, is that correct?

Mr. WRIGHT. Only for ratemaking purposes.

Mr. WHITFIELD. Only ratemaking. Now, in your testimony and also in the—you know, one of the things I do like about this legislation, though, is that the Constitution does grant Congress the authority to regulate foreign commerce. And I think many of us are concerned that, over time, the executive branch has become more and more and more powerful. So one of the exercises that I do appreciate with this legislation is it gives us the opportunity to visit that issue and the role of Congress in regulating foreign commerce.

But in the legislation it says approval is not a major Federal action, and you touched on that in your testimony. Would you elaborate just a little bit on the concern that you have over that segment of the legislation?

Mr. WRIGHT. Well, under the Natural Gas Act under Section 3 and Section 7, and also enhanced by the Energy Policy Act of 2005, FERC acts as the lead agency for the environmental review under NEPA. As such, my concern is, especially on those border facilities that involve upstream facilities that would be subject to Section 7, normally, we are looking at an environmental impact statement. So a finding of not a major action leaves a question in my mind whether the NEPA requirements have been totally fulfilled.

Mr. WHITFIELD. And you think this legislation would affect that?

Mr. WRIGHT. Well, it seems conclusory and the fact that it says the border facilities would not constitute a major Federal action.

Mr. WHITFIELD. Yes. Now, I know you expressed concern about that 120-day period to approve. Is there another period of time that you would feel more comfortable with?

Mr. WRIGHT. Well, I believe the Commission—and I only speak with regard to natural gas pipelines—has been fairly responsive with regard to facilities, whether they are within the country or at the border. There are some 31 border crossings with Canada, 18 with Mexico. We have 2 more pending with Mexico, a major increase in export volumes there. And I think we act fairly expeditiously but there are also concerns whether it is landowner concerns, other Federal agency concerns, especially on the borders. So I would believe 92, 93 percent of our cases are issued within a year

of filing and those are fairly well-reasoned decisions that we come out with.

Mr. WHITFIELD. 92 percent within a year? OK. Now, you indicate in your testimony that the current natural gas pipeline permitting process is working, and yet it has been brought to our attention massive price disparities in the U.S. despite the fact we have an abundance of natural gas. For example, in January of this year in New Hampshire, residential natural gas prices were 30 percent above the national average. Massachusetts was 43 percent and Maine was 67 percent above the national average. So do you feel like that because of those disparities that we should take action to deal with that or is that just a natural course of supply and demand?

Mr. WRIGHT. I believe the way FERC approaches that, we don't plan infrastructure. We are very much a reactionary agency and that someone proposes and we dispose as quickly as we can. Disparity in the Northeast may be owing to the fact that pipeline companies are not proposing to build facilities, you know, for whatever market-based reasons they see. Currently, we only have one pipeline major project that is in our pre-filing process that would serve New England. It is a Spectra company corporation project. But, as such, we don't dictate where the infrastructure is built. That is a market-based decision.

Mr. WHITFIELD. OK. My time is about expired so, Mr. McNerney, I will recognize you for 5 minutes.

Mr. MCNERNEY. Well, thank you, Mr. Chairman.

H.R. 3301 would replace the existing permitting process for cross-border oil pipelines, natural gas pipelines, and electric transmission lines with a totally new and untested process. And, Mr. Wright, according to your testimony, that means massive changes to the current process. Now, my understanding is that FERC has responsibility only for the natural gas permitting process and have there been major or long delays with the permitting of cross-border natural gas pipeline projects under the current process?

Mr. WRIGHT. In my opinion, there have been no major delays. Always, sponsors of pipeline projects desire their projects to be approved as soon as possible. Sometimes there are other stakeholders that have questions, that ask us questions that become part of our NEPA analysis, and we have to answer all stakeholders.

Mr. MCNERNEY. Thank you. Well, the NEPA language in the bill is a little unclear. The Department of Energy says that the language appears to exempt new approvals from the NEPA review. FERC lawyers have also looked into the NEPA provisions in the bill. Did they think that this is an ambiguous language?

Mr. WRIGHT. Well, it appears that you could construe the language in the filing dates, that you could actually delay projects, wait for the legislation to come into effect, and then operate under the new 120-day regime.

Mr. MCNERNEY. So there is a significant degree of ambiguity according to FERC?

Mr. WRIGHT. I don't know if it is ambiguity. It is the way the legislation reads. I mean there are time frames of when things would take effect and what certain projects would be subject to to this new act.

Mr. MCNERNEY. OK. Well, the bill would require a pipeline application to be approved within 120 days. Is that anywhere near long enough for FERC to prepare environmental impact statements?

Mr. WRIGHT. No, I do not believe so.

Mr. MCNERNEY. Is that long enough to ensure time to prepare less detailed environmental assessments?

Mr. WRIGHT. No, I think we would need more time even to do the lesser environmental assessment.

Mr. MCNERNEY. Well, given the bill's what I am calling ambiguous language and deadline for approval, do you believe that these cross-border pipeline projects would receive adequate environmental review under the process established by the bill?

Mr. WRIGHT. Given that my charge is under NEPA, I don't see it as adequate time to acquit myself of the NEPA responsibilities assigned to the Commission.

Mr. MCNERNEY. Well, a full environmental analysis is just one of the steps taken before a project is approved under the current process. Would 120 days be enough time for adequate public comment or consultation with other agencies?

Mr. WRIGHT. I do not believe so.

Mr. MCNERNEY. One of the big changes in the bill in my opinion is the language from national interests to national security interests. How do you think that would affect the permitting process, that one change?

Mr. WRIGHT. Well, it seems to remove the public interest determination that is charged not only to FERC in terms of evaluating facilities but also possibly to the Department of Energy, but I don't want to address the Department of Energy. Those are their issues. So really the only interest or decision to be made is concerning national security with regard to the import or export facilities.

Mr. MCNERNEY. Well, has FERC had the responsibility to look at national security interests prior in the current process?

Mr. WRIGHT. No, we do not have that responsibility.

Mr. MCNERNEY. So how would FERC go about determining national security interests if it has this obligation?

Mr. WRIGHT. Well, as I said in my testimony, during the presidential permit process, we issued a letter to the Secretaries of State and Defense for their concurrence. If they had national security issues, they would display those concerns in their reply to us. Also, there are other agencies such as the Department of Homeland Security. In fact, we have a current case before us on the Arizona/Mexico border that involves concerns by the customs and the border patrol——

Mr. MCNERNEY. So this one simple change going from national interest to national security interest approaches this process exactly the way that the bill's authors intended not to do by shoving it back into the administration's discretion as to whether something is national security or not?

Mr. WRIGHT. Yes, I——

Mr. MCNERNEY. In other words, it removes it from the legislative language and gives it back to the administration, this one word?

Mr. WRIGHT. Yes.

Mr. MCNERNEY. Thank you. I yield back.

Mr. WHITFIELD. The gentleman yields back.

At this time I recognize the gentleman from Texas, Mr. Barton, for 5 minutes.

Mr. BARTON. Thank you, Mr. Chairman.

I want to make sure that I understand the administration's position. Are you testifying on behalf of the Obama administration?

Mr. WRIGHT. No, I am not.

Mr. BARTON. Are you testifying on behalf of the Federal Energy Regulatory Commission's official position?

Mr. WRIGHT. No, I am not. I am a representative of the Federal Energy Regulatory Commission, but my views don't represent any——

Mr. BARTON. But your views basically represent your views as an individual citizen? Is that correct?

Mr. WRIGHT. As a citizen and as an official at the FERC.

Mr. BARTON. Well, now, you can't have it both ways. You can testify as a citizen like anybody in the audience behind you or you can testify on behalf of the FERC. Which is it?

Mr. WRIGHT. Well, if you put it that way, I guess I am testifying as a citizen who happens to work at the FERC. But I wouldn't have been invited here to speak in this position if I were not at the FERC.

Mr. BARTON. Well, but I don't really speak for the administration. I can accept that, I guess, but you have to—well, you don't have to, but if you are here because you work at FERC and you are a senior official at FERC, one would assume that you testify on behalf of FERC, and whatever you say is their position. I mean, isn't that logical?

Mr. WRIGHT. That is a fair statement.

Mr. BARTON. Well, my primary question is do you oppose this legislation because of its content or do you oppose the legislation because you feel it is better to do this by Executive Order as compared to congressional legislation? Do you understand?

Mr. WRIGHT. I understand. I am looking at the legislation from the viewpoint of my 34 years of experience at FERC and in processing these types of applications and with the charges that have been given to us over the years, the various laws, and especially the NEPA responsibilities. That is a Federal mandate under the Energy Policy Act of 2005.

Mr. BARTON. Do you agree that the Congress has the right to legislate in this area?

Mr. WRIGHT. Yes, I do.

Mr. BARTON. OK. So your opposition is based on the content of the legislation?

Mr. WRIGHT. Yes, it is based on how I processed applications in the past, the acts, the laws, statutes that we operate under, and looking at it in that vein and looking at the new legislation. Obviously, if Congress wishes to change the regime, that is their prerogative.

Mr. BARTON. Well, we appreciate you agreeing that it is our right to do it. You know, it is an esoteric issue but I think that there is value given the fact that we are about to engage in what could be an export boom to codify in legislation the way these permits are handled.

There is nothing intrinsically wrong with presidential Executive Orders, but the primary Executive Order was passed back in the 1950s under President Eisenhower. It has been amended several times, and of course, in natural gas there is growing interest interestingly in exporting natural gas from the Southwest into Mexico, and the dynamics of that are very positive for both countries. So if we could codify it in a bipartisan way both in a bicameral way in the House and the Senate, I think we would have a better system. We certainly would have a more open system and I would hope, as you pontificate in your office on your personal views, you might shed some light with your other friends at FERC what you would want to do to improve the legislation so that it could be officially supported by the FERC and officially supported by the Obama administration. I think this is a serious intent, a serious effort to try to get ahead of the curve for a change in the Congress and hopefully it will bear fruit.

And with that, Mr. Chairman, I yield back.

Mr. WHITFIELD. The gentleman yields back. At this time I recognize the gentleman from Texas, Mr. Green, who is one of the authors of the legislation.

Mr. GREEN. Thank you, Mr. Chairman.

And, Director Wright, welcome. In your testimony you state that "a 120-day approval deadline would not permit construction of an adequate record, enable the important agency consultation, or allow for meaningful public interaction in arriving at the decision." And that is a direct quote. The purpose of the 120-day deadline is only regarding the decision on whether the commodity in question—in the case of FERC, natural gas—is allowed to enter the country. Do you agree with that? I think it is important we establish that.

Mr. WRIGHT. My reading is it would apply to the permitting process. That is the permitting process for facilities. If that is a misreading of it, then probably I shouldn't even be here.

Mr. GREEN. Well, you might want to read it again. Director Wright, setting aside the presidential permit issue, because my intent and our intent is it is only the 120 days on the presidential permit. And considering it only covers two countries, Mexico and Canada, because we have free trade agreements, and I can put a 100-car train coming from Alberta, Canada, without getting permission to cross because of the free trade agreement, but to get a presidential permit for a pipeline and yet we can bring all the train cars and trucks we want, long-haul trucks.

But let me get to my question. Setting aside the presidential permit issue, do permits issued under Section 3 and Section 7 of the Natural Gas Act trigger NEPA reviews?

Mr. WRIGHT. Yes. And I would like to clarify there are applications under Section 3 and Section 7 to construct facilities and there is also a presidential permit requirement.

Mr. GREEN. OK. The construction of the facilities would still be under NEPA review under the Natural Gas Act under this legislation?

Mr. WRIGHT. Is the question—

Mr. GREEN. OK.

Mr. WRIGHT. I think you are asking me that—

Mr. GREEN. I think your answer should be yes because if I have to go to the bill, I will show it to you. Your answer is yes, though? We don't touch the Natural Gas Act on triggering NEPA reviews.

Mr. WRIGHT. OK. It was not clear to me from the text of the bill that NEPA was—

Mr. GREEN. OK. Well, we will work on that but we will try and make it clear to FERC what it says.

Does H.R. 3301 waive compliance of the natural gas pipelines to comply with Section 3 or 7 of the Natural Gas Acts? Does anything in this bill waive compliance for natural gas pipelines to comply with Section 3 or Section 7 of the Natural Gas Act?

Mr. WRIGHT. Only in the sense of not being able to conduct the proper NEPA review—

Mr. GREEN. OK.

Mr. WRIGHT. —that we have—

Mr. GREEN. OK. Your proper NEPA review would still be under Section 3 and 7 though.

Mr. WRIGHT. OK.

Mr. GREEN. Because the Natural Gas Act triggers a NEPA review. And you are right. You say the only thing NEPA wouldn't involve is to bring that commodity across the border. There is no NEPA review right now on me to bring that 100 train cars full of Canadian crude to one of our refineries in Texas. We don't need any permits. We just bring them across the border. So that is the intent of the bill. Why would we need a NEPA review when there is not one for any other mode of transportation?

Mr. WRIGHT. Well, it is a major Federal action under the—

Mr. GREEN. OK. Well, let me get going. Does H.R. 3301 waive compliance with any other Federal, State, or local law beyond the limit that question of whether or not a project should be approved across the border of the United States? Is there any other waiver in this H.R. 3301 that waives any State or local law?

Mr. WRIGHT. It does not waive. However, the 120-day period could compromise the other agencies—

Mr. GREEN. OK. One hundred and twenty days again going back only affects the presidential permit issue. It doesn't affect State law, and frankly, I listed—and I am sure we will hear it again in a few minutes the number of Federal acts it doesn't touch. There are NEPA acts under the Natural Gas Act. There are NEPA acts under many other Federal laws that don't cover it.

Does FERC have the authority under the Natural Gas Act to include language to rescind the permits it issues or put in requirements for reporting?

Mr. WRIGHT. Yes, it does.

Mr. GREEN. OK. You also state the proposed act does not make explicit provision for public notice, public comment, et cetera, but when it comes to the actual siting and construction, wouldn't FERC have the ability to consider stakeholder concerns, conduct analysis, and solicit opinions during the pre-filing process and that which follows?

Mr. WRIGHT. If the correct reading is this act only deals with the presidential permit, then under Section 3 and Section 7 of the NGA, we would still have the ability to do those public outreach, public contact—

Mr. GREEN. OK. Mr. Chairman, I am almost out of time but I want to make sure we are only talking about the presidential permit to waive the NEPA reviews because I wouldn't support it if it changed all the others under Federal law, including particularly the Natural Gas Act because right now we have—I don't know how many pipelines go from Texas to Mexico delivering natural gas, and I am hoping we are going to build some more because we would like to sell it to them.

And I yield back my time.

Mr. WHITFIELD. Certainly, that is an area we can work to clarify.

And at this time I recognize the gentleman from Louisiana, Mr. Scalise, for 5 minutes.

Mr. SCALISE. Thank you, Mr. Chairman. I appreciate you having the hearing on this important bill. I support the legislation by the chairman and by the gentleman from Texas. It is a good bipartisan bill that actually allows us to have more cooperation between our neighbors, both Canada and Mexico, and doing something we already do. And, Mr. Wright, I think one of the concerns you were expressing is what role FERC would play. It is my understanding that under this bill the Department of Commerce could still contract out with you or you would still have a role that you would be able to play under this bill. Is that correct?

Mr. WRIGHT. I don't understand the reference to Commerce. We don't interact with the Department of Commerce.

Mr. SCALISE. Well, the Department of Energy, I apologize, that there was nothing in this though that impedes the Department of Energy from delegating certain responsibilities to FERC. Is that——

Mr. WRIGHT. No, they have delegation authority.

Mr. SCALISE. Yes, so you could still play a role.

Mr. WRIGHT. In terms of siting facilities.

Mr. SCALISE. Yes. Now, you were talking about also citing concerns with landowners. What in this bill would impede that because, you know, what we are talking about here is the actual permit to cross the border, not the full route of the pipeline. I mean ultimately you still would have to have the normal State involvement, so States would still have a say, in fact, in essence a veto authority over whether or not they would permit it within any State, not only where it crossed the border, but any other part of the route that pipeline will go, isn't that correct?

Mr. WRIGHT. As is my new understanding of the bill, it only deals with the presidential permit, which I would point out has never been a problem at FERC or never been the——

Mr. SCALISE. Right, but do you see anything that impedes that State role that currently exists and even with this bill would still exist?

Mr. WRIGHT. No, it does not change the State's role in terms of——

Mr. SCALISE. Right. So what would your——

Mr. WRIGHT [continuing]. Section 7.

Mr. SCALISE. Right. You were citing landowner concerns, so what would those landowner concerns be that still there would be many opportunities to address both at the State and at the Federal level even if this bill were to become law.

Mr. WRIGHT. Well, given the understanding that this is dealing solely with the presidential permit, the rights of citizens under Section 3 and Section 7 of the Natural Gas Act to intervene, to file comments would be preserved.

Mr. SCALISE. Right. In fact, there is a whole list of Federal laws that would still apply, you know, and again depending on the route, you know, this is just to say whether you cross the border. Ultimately, you still would have to get permission, both Federal and State, to determine the route, and then all those other Federal laws would still apply.

You know, I think my colleague from Texas was talking about the number of crossings we already have. He was asking about natural gas. We have 21 crossings with Mexico just on natural gas pipelines, 29 with Canada, currently 19 crossings both with Canada and Mexico on oil, and as it relates to electricity transmission, there are 40 already happening. This isn't some new process. It is just talking about expediting a process that right now is not real structured and frankly has become bogged down in bureaucracy.

And you look in the Northeast, I mean, they pay very high prices. I think 7 of the top 10 cities for electricity prices, if you exclude Hawaii and Alaska, are in the New England area. And, you know, what would be wrong with having an expedited process if there is an ability to generate more commerce with our friends in Canada, help lower electricity rates into the New England area? Why would that be something that FERC would have concerns with?

Mr. WRIGHT. I only have concerns with the facilities that need to be constructed and making them environmentally—or mitigate any environmental damage or harm that may be. We do process——

Mr. SCALISE. But environmental issues, I mean there is nothing here that gets rid of the NEPA process. Do you see anything in H.R. 3301 that waives NEPA compliance for an application across the border under Section 3 or 7?

Mr. WRIGHT. Well, it wasn't only my interpretations. It was the interpretation of other senior staff at FERC that this would abrogate our responsibilities under Section 3 and Section 7.

Mr. SCALISE. Yes, well, there are still—and I think my colleague from Texas pointed this out, as others have—there still is a role in NEPA and many other Federal laws that don't just go away and there is still that State role, which is a very important role that would not be trumped by this legislation either. So, you know, maybe your folks need to go back and take a look or, you know, our folks can talk to you about the differences in interpretation you are having, but we sure don't see those concerns here.

And with that, I yield back the balance of my time.

Mr. WHITFIELD. The gentleman's time is expired.

And I would like to take just a moment of personal privilege to welcome John Yarmuth of Kentucky to the subcommittee. We now have three Kentuckians on the Energy and Commerce Committee, and I think this is your first meeting with Energy and Power, so I look forward to working with you, John, and thank you for joining the Energy and Commerce Committee.

Mr. YARMUTH. I appreciate it. Thank you, Mr. Chairman.

Mr. WHITFIELD. At this time, I would like to recognize the gentlelady from the Virgin Islands, Dr. Christensen, for 5 minutes. You have no questions? OK.

Mr. Tonko of New York for 5 minutes.

Mr. TONKO. Thank you. Thank you.

The Upton bill would replace the existing presidential permit process for cross-border natural gas pipelines with a completely new rubberstamp approval process. Currently, a project cannot get a presidential permit unless the applicant can show the project is in the broad public interest. But under this bill, FERC would be required to approve a project within 120 days unless it finds that the project is not in the national security interest of the United States. This is a much narrower standard.

Mr. Wright, under this new national security standard, would FERC be allowed to consider environmental impacts, pipeline safety, engineering issues, or economic effects when deciding whether to approve a pipeline?

Mr. WRIGHT. Well, this leads to my confusion on the bill. If the presidential permit per se is not a siting procedure, then I am not quite sure then what the 120-day limit applies to. The assumption at FERC was it applied to authorizations under Section 3 for border facilities.

Mr. TONKO. Um-hum. And under the current presidential permit process, the Defense Department and the State Department need to sign off on a pipeline, but that requirement disappears under this bill. Does FERC have much experience with national security determinations with respect to natural gas pipelines?

Mr. WRIGHT. No, it does not.

Mr. TONKO. I would like to focus on the current permitting process for a minute. My understanding is that a company that wants to build a natural gas pipeline across the border with Canada or Mexico needs both a presidential permit and an approval under Section 3 of the Natural Gas Act. But an applicant submits one application package to FERC for both approvals, is that correct?

Mr. WRIGHT. Correct.

Mr. TONKO. The Natural Gas Act permitting process requires an environmental review, which takes some time, but the presidential permit process is happening simultaneously. Does the presidential permit process slow things down or does the Natural Gas Act review basically determine how long the permitting process takes?

Mr. WRIGHT. It is usually within the Natural Gas Act, the NEPA review is the critical time path. The presidential permit, in fact the last two or the two current cases we had have taken less than 2 months to get concurrence from State and Defense.

Mr. TONKO. Thank you. And so the Natural Gas Act review really determines how long it takes to get a cross-border pipeline approved. FERC's lawyers have examined this instant bill. Does this bill have the many the requirements for a project to get an approval under Section 3 of the Natural Gas Act?

Mr. WRIGHT. It doesn't appear to eliminate Section 3 or Section 7, but our interpretation is it gave us 120 days to complete the studies we needed to do.

Mr. TONKO. And, Mr. Wright, you are a career manager at FERC and you deal with natural gas pipeline applications every day. Do

you think that this measure, this bill will speed up permitting for cross-border natural gas pipelines?

Mr. WRIGHT. For gas pipelines, given the understanding that it only eliminates presidential permits, it would not speed up the process.

Mr. TONKO. Thank you, Mr. Wright. This bill eliminates important environmental and safety reviews without even speeding up the permitting process for natural gas pipelines. It is really the worst possible outcome we could imagine. I think this bill is going in the wrong direction.

And with that, Mr. Chair, I yield back.

Mr. WHITFIELD. The gentleman yields back.

At this time I recognize the gentleman from Illinois, Mr. Shimkus, for 5 minutes.

Mr. SHIMKUS. Thank you, Mr. Chairman.

I love my friend from New York but it is absolutely the opposite. This deals with the presidential permit. Mr. Wright, you said this numerous times and I just want to give you—this keeps in force for the review of the entire project the Clean Water Act, doesn't it?

Mr. WRIGHT. Yes.

Mr. SHIMKUS. It keeps in force the Clean Air Act, correct?

Mr. WRIGHT. Correct.

Mr. SHIMKUS. The Endangered Species Act?

Mr. WRIGHT. Correct.

Mr. SHIMKUS. The Mineral Leasing Act?

Mr. WRIGHT. Yes.

Mr. SHIMKUS. The Rivers and Harbors Act?

Mr. WRIGHT. Yes.

Mr. SHIMKUS. The Fish and Wildlife Coordination for Fish and Wildlife Services' consultation?

Mr. WRIGHT. Yes.

Mr. SHIMKUS. The National Wildlife Refuge System and Administration Act?

Mr. WRIGHT. Yes.

Mr. SHIMKUS. The Wilderness Act?

Mr. WRIGHT. Yes.

Mr. SHIMKUS. The Federal Land Policy and Management Act?

Mr. WRIGHT. Yes.

Mr. SHIMKUS. The National Environment Policy Act?

Mr. SHIMKUS. Yes.

Mr. WRIGHT. I would hope so.

Mr. SHIMKUS. I would say that, yes. So I mean this is just for the presidential permit; it is not for the construction. So, you know, my colleagues can say this is disrupting the entire world, but it is not. And to keep it short, I want to go to this debate on national security interests. Having served in the military and we are all concerned about national security, I think you have a different definition of what is generally accepted for national security interests because national security interests is a well-understood term in the foreign affairs and national security arena. And this is an international affairs issue. It is not just solely a national concern.

According to the U.S. Army Combined Arms Center, national security interests includes "preserving U.S. political identity, framework, and institutions, fostering economic well being and bolstering

international order supporting the vital interest of the United States and its allies." It is a term found multiple times in Federal law. During the 111th Congress, for example, there were eight bills signed into law by President Obama that contained the phrase "national security interest." The term national security interest is a more appropriate and better-understood threshold for determining whether or not a project should cross the border of the U.S. than the current "national interest," a determination which has broad and ill-defined interpretations that can change over time and is susceptible to political interference.

Now, my question, do you believe that national security interest is a more appropriate threshold for approving projects crossing the border of the United States than the current ill-defined national interest standard that is in place through Executive Order?

Mr. WRIGHT. We are charged under the Natural Gas Act with determining what is in the public interest. It is not in the Executive Order.

Mr. SHIMKUS. And that is why we have this law change because many things that deal internationally deal with the term "national security interest."

Mr. WRIGHT. Um-hum.

Mr. SHIMKUS. And to weave a tale that this isn't all-encompassing in the national interest of both countries and our allies and our economy and our political systems is just wrong. So with that, I thank you for your time and I yield back.

Mr. WHITFIELD. The gentleman yields back.

At this time I recognize the gentlelady from Florida, Ms. Castor, for 5 minutes.

Ms. CASTOR. Well, thank you, Mr. Chairman. And welcome and thank you for your testimony.

I think we need to rename this bill the North American Environmental Trial Lawyer Full Employment Act because I think what will happen in the end is it will create greater litigation due to uncertainty. The benefit of having a collaborative process where you have the public involved and you have this overriding review is that you work out the issues in advance. You work out the alternatives, the mitigation alternatives and conditions. And your testimony was that 92 percent plus of pipelines make it through the process, is that correct?

Mr. WRIGHT. In one year.

Ms. CASTOR. You have said that you find the legislation problematic and it does not provide you with adequate time to carry out your duties and responsibilities. And what this will do is lead to greater conflict over time, and I think it will make it much more difficult to have these important pipelines across national borders approved.

I also see a greater risk of litigation based on the exchange you had with Representative Green where you already have different interpretations of what the language means. I think this in the end would be again ripe for litigation that would end up delaying these very important pipeline projects.

Tell me this based on your expertise. Right now, if a pipeline is simply within a State, that doesn't trigger your review, is that correct?

Mr. WRIGHT. If it is a border facility and it is crossing the border, it always triggers our review under Section 3 of the Natural Gas Act.

Ms. CASTOR. Right. So if it is just an interstate pipeline, the presidential permit is not at issue, correct?

Mr. WRIGHT. No, it is an issue under Section 3.

Ms. CASTOR. So for the presidential permit it has cross into Canada or into Mexico, is that correct?

Mr. WRIGHT. Correct.

Ms. CASTOR. So if this legislation is passed and it removes the requirement for the presidential permit, what review process would be in place then for environmental considerations going forward?

Mr. WRIGHT. Well, as I have been told today, Section 3 and Section 7 of the Natural Gas Act are not being affected. What I don't understand and I would say my colleagues at FERC don't understand is what does the 120-day review period apply to? It doesn't apply to presidential permits—

Ms. CASTOR. Um-hum.

Mr. WRIGHT. —if they are removed. There is a 120-day permit period that truthfully I don't understand what that applies to.

Ms. CASTOR. So it very well could lead to a gaping hole in oversight of what are sometimes very complex pipeline projects that cross international borders?

Mr. WRIGHT. Correct.

Ms. CASTOR. OK. Again, colleagues, I think this needs to go back for much greater work, and I think just some friendly advice. You need to rethink the overriding goal here. If the overriding goal is to expedite some of these complex projects, the last thing you want to do is create greater uncertainty and expand the litigation risk moving forward. These complex projects that cross international borders most often benefit from having the collaborative process where you get input from everyone, you consider the alternatives, and the ways to mitigate these projects.

So thank you and I yield back.

Mr. WHITFIELD. The gentlelady yields back.

At this time I recognize the gentleman from Texas, Dr. Burgess, for 5 minutes.

Mr. BURGESS. Thank you, Mr. Chairman.

And thank you, Mr. Wright, for being here. Going back to Mr. Shimkus' line of questioning from just a moment ago, if I understood right, at the conclusion of his list that he posed in the form of question, the bill under consideration today would or would not waive the NEPA compliance for an application and a cross-border pipeline?

Mr. WRIGHT. I do not see it as waving it. I see it as possibly compromising the NEPA review.

Mr. BURGESS. Well, look, you know the problem that we have. A 120-day timeline may seem brief bureaucratically but I don't know how many 120-day intervals there have been since the State Department approved this. I believe it was in June or July of 2011 when they gave the first approval for the leg of the pipeline for TransCanada.

Now, during the campaign in 2012 the President came to Cushing, Oklahoma, and said the pipeline to the Gulf of Mexico should

be built, so the southern half of the pipeline should be built. That is within the United States. That is within the purview of the company, property acquisition, maintaining consideration of property rights all can happen, did not need a presidential directive in order to happen.

But those people in the State of Texas and other States, Arkansas, that gave up of their property so that the easement for the pipeline could be accomplished down to the Gulf of Mexico, I mean that was tendered with the understanding that this would improve the overall economy of Texas because there would be so much more product that would be refined in those refineries down in the southern part of Texas. And yet the northern half of the pipeline has yet to be built, so the product that was to come through the pipeline has not materialized. So it is almost as if these people had their property taken from them under false pretenses.

Here is a pipeline that is going to span the length or the breadth of the United States from Canada to the Gulf of Mexico, it is going to benefit the economy of Texas, it is going to benefit the consumer with lower costs, and none of that has come to pass. And it appears to me that the reason it hasn't come to pass is because the administration has been immobilized by political concerns. It doesn't want to irritate the unions on one side, doesn't want to irritate the environmental left on the other side, and as a consequence, simply cannot make a decision.

And Chairman Upton is correct. There are other considerations. A lot of people talk about the Eagle Ford Shale in southern Texas and what a benefit that has been to the local economy. I am not a geologist but I don't think the Eagle Ford Shale stops at the Rio Grande River. It likely continues on down into Mexico. At some point their State-run oil interest is likely to have an interest in developing that resource, and in all likelihood, they may need to come to a market that is in the United States. It seems logical that there should be a mechanism by which that could work not just from north to south but from south to north if that be in everyone's economic interest.

So it is just astounding to me as I have sat through hearing after hearing after hearing in this committee and the bottleneck is the administration. The bottleneck is actually the President of the United States who refuses to grant the permit for that last little bit of pipeline to be laid between Canada and the United States. And as a consequence, we keep having to revisit and relitigate and introduce bills to try to overcome that administration in transition that has essentially blocked a program that many people in my State thought that they were, you know, I don't like giving up my land but if it is to the greater glory and good of the United States, I will do it. But that has been blocked. And this is the same pipeline that the President came to Cushing, Oklahoma, and said I want this built. And yet they never have delivered on the promise that the additional product that would be brought down from Canada—it really wasn't posed in the form of question, but if you have observations, I will be happy to hear them.

Mr. WRIGHT. Well, first and foremost, I appreciate your view. The State Department's process regarding the presidential permit is seemingly different than FERC's process. The State Department

does answer to the executive branch. FERC is an independent agency.

Mr. BURGESS. And just for historical reference, the State Department approval, do you know when that occurred?

Mr. WRIGHT. No, I——

Mr. BURGESS. August 26 of 2011, over 2 years ago.

Mr. WRIGHT. Pipelines aren't under FERC's purview other than making rates for them, so we don't site them, we don't keep up, we don't process presidential permits. That is the State Department's——

Mr. BURGESS. But all of this legislative activity is necessary to try to overcome, again, the intransigence of the administration, and that really is the shame here. It is holding back the economic recovery that we all know we want in this country and I for one just simply don't understand why we haven't built it yet.

Thank you, Mr. Chairman, for your indulgence. I will yield back.

Mr. WHITFIELD. The gentleman yields back.

At this time I recognize the gentleman from Texas, Mr. Olson, for 5 minutes.

Mr. OLSON. I thank the Chair.

And good morning, Mr. Wright.

Mr. WRIGHT. Good morning.

Mr. OLSON. What a difference a few years make for the American energy economy. Imports are falling, exports are rising, and affordable fossil fuels are helping turn around our manufacturers and our petrochemical industry. It is not a surprise that Houston, Texas, my hometown, has become the largest port for exports from the United States of America. However, this North American energy renaissance will be cut short if we can't move those resources. We can build miles of pipe or transmission America, but somehow crossing the border becomes an invisible wall.

And that is why I support this bill before us today. It gives us a chance to move our economy forward, creating thousands of American jobs from the wellhead to the pipeline to the refineries to the docks with their ships. And it will maybe give us a foreign trade surplus. That would be great.

I have one question, sir. Having said all that about pipelines and gas, exports of gas are one of my highest priorities. Today's bill very importantly touched on a few gas export issues. However, FERC really has work to do on a much broader set of gas export applications. My first question is what should I view as a reasonable length of time for FERC to view a current gas export application?

Mr. WRIGHT. For LNG or for a pipeline?

Mr. OLSON. For pipeline, just gas in general.

Mr. WRIGHT. Pipelines I would consider—it is really dependent upon the upstream facilities that need to be built to get to the border, but reasonably speaking, probably a year.

Mr. OLSON. OK. One final question. Does the FERC staff give any consideration to the strategic importance of these projects as it works on these applications?

Mr. WRIGHT. We can give consideration to all the stakeholders, the project proponent who is backing the export if you will of the

gas down to the landowner, who is impacted by the siting of pipelines or facilities necessary to affect that export.

Mr. OLSON. Well, thank you, Mr. Wright.

I yield back the balance of my time, Mr. Chairman.

Mr. WHITFIELD. The gentleman yields back.

At this time I recognize the gentleman from Kansas, Mr. Pompeo, for 5 minutes.

Mr. POMPEO. Thank you, Mr. Chairman.

Mr. Wright, I want to talk to you, you have a lot of skepticism about statutory deadlines, that is, you do personally, but I want to make sure and distinguish that from FERC. This is a follow-up really on both Mr. Whitfield and Mr. Barton's questions from earlier. So you are not testifying about what the FERC commissioner said. In your written testimony you confirm that, correct?

Mr. WRIGHT. I am sorry. I didn't understand your question.

Mr. POMPEO. So you are not testifying on behalf of any of the FERC commissioners or on behalf of the institution of the Federal Energy Regulatory Commission?

Mr. WRIGHT. I was requested in my role as a director of——

Mr. POMPEO. And it is a yes-or-no question. I mean it is pretty straightforward. Are you testifying on behalf of any of the FERC commissioners?

Mr. WRIGHT. No.

Mr. POMPEO. All right. We will leave it at that.

Mr. Whitfield asked you about 120-day deadline. He asked you if there was any deadline that you would find acceptable, and you went into a long rambling discourse. Is there any deadline—how many days would you find acceptable as a period of time in which your work needed to be completed?

Mr. WRIGHT. If we have a complete application before us, 12 months is probably a reasonable time as in H.R. 1900.

Mr. POMPEO. Great. And that is what I was going to get to because this is a similar issue that you were involved in in H.R. 1900 when we were working on a pipeline permitting bill that is my legislation that had a 12-month period of time. You didn't like that deadline either, but Commissioner Moeller came in to testify. You were here for that hearing. He testified he had some changes. We made all of those changes. And then you went out last week and called that legislation draconian. Do you think this legislation is draconian as well?

Mr. WRIGHT. Well, with regard to H.R. 1900, I did not characterize the portion that applies to FERC as draconian.

Mr. POMPEO. I will read it so everybody has got it. You were referring to the 90-day deadline for other agencies and you said it is still difficult. You said "that is a rather draconian way to go about it." Do you think this legislation is draconian in setting a deadline for you to complete the task that sits before you?

Mr. WRIGHT. As I said earlier, I am not quite sure what the 120-day deadline applies to anymore. It doesn't apply to presidential permits because they are being taken out of the equation. My assumption was that it applies to Section 3 and Section 7. If that is the assumption, I don't think that is long enough.

Mr. POMPEO. They are not, but one year would be? Twelve months would be so——

Mr. WRIGHT. Twelve months from when we determined that all the information is there that we need.

Mr. POMPEO. Great. So with respect to H.R. 1900, you have taken a different position than Commissioner Moeller, is that correct, on the deadline statute or now you are telling me you have the same position with respect to each of the statutory deadlines?

Mr. WRIGHT. No. Commissioner Moeller at his testimony this past summer mentioned the same thing, that there needs to be some oversight because the idea of giving 90 days and then deeming those agency permits approved could give those agencies the opportunity to either dismiss their applications or put conditions on them that are so onerous the infrastructure wouldn't get built.

Mr. POMPEO. Right. That is not exactly what he said. He said he thought the legislation, H.R. 1900, made good sense so long as we created the right starting point for the period of the clock beginning to run. That was his actual testimony.

Mr. WRIGHT. Well, I read a portion that he said about the 90-day limit, that was an oversight to watch out for these agencies because this is something they might do.

Mr. POMPEO. Fair enough. You know, it is important. It is confusing, Mr. Wright, when you come here as a staff member to come testify. Politico this morning had a headline with respect to your testimony. It says "FERC slams bill" referring to H.R. 3301. You didn't write that headline, but I just think it is important that everybody understands that FERC hasn't slammed this bill, you did. It was your testimony that was characterized——

Mr. WRIGHT. Well, I am trying——

Mr. POMPEO [continuing]. By Politico.

Mr. WRIGHT [continuing]. To understand the bill.

Mr. POMPEO. I understand. I will yield back.

Mr. WHITFIELD. The gentleman yields back and that concludes the questions for Mr. Wright. Mr. Wright, we appreciate you being here and giving us your views on this legislation. And so you are dismissed at this time.

And I would like to call up the second panel. On the second panel today we have Mr. Mark Mills, who is a senior fellow with the Manhattan Institute. We have Mr. Paul Blackburn, who is an attorney, regulatory consultant to Blackcreek Environmental Consulting. We have Ms. Mary Hutzler, who is the distinguished senior fellow at the Institute for Energy Research. We have Mr. David Mears, who is a Commissioner with the Department of Environmental Conservation, the State of Vermont. We have Mr. Jim Burpee, who is president and CEO with Canadian Electricity Association.

And I would like to recognize Mr. Green for the purpose of an introduction.

Mr. GREEN. Thank you, Mr. Chairman. One of our witnesses today is a personal friend and a former elected official. He was a district judge in Houston/Harris County, and John Kyles, senior attorney with Plains All American Pipeline. And John and his wife and our families go back for a few decades, and I just want to welcome him here. Like I said, he was State district judge, and at one time I think we even recommended him to be U.S. Attorney, but

he had twins and decided he couldn't come to Federal employment. He needed to stay in private practice.

But I want to welcome Judge Kyles. Thank you, John, for a lot of service to our community as a judge and I sure appreciate your friendship.

Thank you, Mr. Chairman.

Mr. SCALISE [presiding]. Thank you for the introduction and we will now go to our witnesses, starting with Mr. Mills. You each have 5 minutes for opening testimony.

STATEMENTS OF MARK P. MILLS, SENIOR FELLOW, MANHATTAN INSTITUTE FOR POLICY RESEARCH; DAVID K. MEARS, COMMISSIONER, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, STATE OF VERMONT; PAUL C. BLACKBURN, ATTORNEY AND ENVIRONMENTAL CONSULTANT, BLACKCREEK ENVIRONMENTAL CONSULTING; JIM BURPEE, PRESIDENT AND CHIEF EXECUTIVE OFFICER, CANADIAN ELECTRICITY ASSOCIATION; MARY J. HUTZLER, DISTINGUISHED SENIOR FELLOW, INSTITUTE FOR ENERGY RESEARCH; AND JOHN H. KYLES, SENIOR ATTORNEY, PLAINS ALL AMERICAN PIPELINE, L.P.

STATEMENT OF MARK P. MILLS

Mr. MILLS. Good morning, Mr. Chairman. Thank you to the committee for the invitation to provide some remarks on this important legislation. I will take my 5 minutes to context for my work over the years in the energy field the importance of this particular Act, and specifically in the context of what I think is currently and still one of the most important things in the national interest, which is revitalizing the U.S. economy and ensuring that there is robust growth in the jobs sector with high-paying jobs.

Let me just present first a thought experiment. Imagine what would have happened over the last 5 or 6 or 7 years but for the extraordinary expansion in the oil and gas sector that the many witnesses in past hearings and many members of this committee have pointed out. And just think in terms of what would have happened but for this extraordinary expansion. I think the United States would have faced not a recession but a depression in fact. If you consider the numbers just as, again, a context that the increased domestic production of hydrocarbons has contributed over $400 billion a year to the U.S. economy. It has attracted something like 200 billion plus and growing in foreign direct investment in the United States. It has driven down imports of oil by 45 percent, which has radically decreased the GDP-robbing trade deficit. We are, as others have noted, now a net exporter of hydrocarbon products for the first time since 1949 and on track, God willing and permit willing, to becoming a net exporter of significant amounts of natural gas, in our own EIA forecasts, about $2 trillion of additional private investment over the next decade in this sector.

And this is such a stunning reversal in the structure of the global and U.S. energy markets that it is inconceivable that the framework of regulation and legislation that has been put in place over the last 50 years still makes fundamental sense in the context of these reversals. In fact, the reversals are physical reversals, as

many folks know. Pipelines had physically reversed their flows literally flowing from heartland to the coasts. We have had reversals in refinery construction, retirements. We have had reversals in shipyard fortunes. We have had reversals in the manufacturing sector.

In fact, let me turn briefly to the manufacturing sector because I think that is at the center of what the opportunity is for this kind of legislation to lead to a revival in the broad manufacturing sector of the U.S. economy. It is already well recognized that the manufacturing sector directly related to oil/gas exploration, production, transport, and refinement has seen a growth and also has been recognized that the energy-intensive sector of the U.S. manufacturing economy is under a massive revival. In fact the American Chemical Council has pointed out that there is about $70 billion in investments underway now and about 100 projects in the United States that will come online in just the next few years that will yield about a million jobs and add about $300 billion to the GDP. These are astounding changes but they are frankly only part of the story and not enough.

The revitalization of that ecosystem will spill over into the rest of the manufacturing ecosystem because of the proximity of high-quality, low-cost, high-reliability supplies and suppliers, because of the proximity of a revitalized labor source and also, frankly, the proximity of reinvestment in the American educational entrepreneurship and venture community that arises from this wealth that occurs.

So the real question, I think, on the table is not what has been posed by a lot of analysts and pundits as to whether or not the United States could become energy independent. It is obviously clear the United States could become economically energy independent and will be doing so very quickly. What is more interesting is the question of whether North America, the United States in combination with its two allies, could be, and will become the single-largest supplier of hydrocarbons to the world. This is a profound change in geopolitics, but more importantly, from a domestic perspective it is a profound change in the fortunes of U.S. companies across the entire industrial ecosystem and for high-paid permanent jobs in the middle markets and middle class.

This won't come about easily because there are so many forms of legislation and regulations that are locked into a historical way of thinking, the paradigm of shortages, the paradigms of disappearing resources that we all know has now evaporated and no longer is the ruling paradigm. And it is in fact a permanent secular shift in the structure of the U.S. energy economy and the world energy economy. We can now become suppliers to the world in combination with our allies, not consumers of the world's resources.

The central issue for me in looking at this legislation and legislation like this is it seems to me it is the first step towards what would be the equivalent of the North American Free Trade Act, a NAFTA-like legislation, which would allow free flow of capital, infrastructure development, and resources between Canada and the United States and Mexico. The Federal Government is not capable, no matter how well intentioned at any levels of bureaucracy or in Congress, of micromanaging this massive, multitrillion-dollar infra-

structure. It could only be done fundamentally from the marketplace and there is no reason why it could not be done effectively between Canada, the United States, and Mexico. This is really an important first step towards unleashing that potential.

Thank you.

[The prepared statement of Mr. Mills follows:]

Testimony of Mark P. Mills
Senior Fellow, Manhattan Institute for Policy Research
Before the Committee on Energy & Commerce
Energy & Power Subcommittee
U.S. House of Representatives

October 29, 2013
Rayburn House Office Building, Washington D.C.

Regarding H.R. 3301
The North American Energy Infrastructure Act

Mr. Chairman, members of the Committee, the North American Energy Infrastructure Act comes at a critical juncture. It comes at time when it is clear that much more needs to be done to revitalize the American economy.

It comes at time of a transformation in the energy landscape that almost no one anticipated. Only a few short years ago everyone was talking about peak oil and gas and about the imperative to find energy resources beyond hydrocarbons.

Instead, we find ourselves today in a world awash in the potential to produce enormous new quantities of oil and natural gas. And the epicenter of that transformation is North America. In a stunningly short time the U.S. has emerged to become the world's fastest growing producer of oil and natural gas, vaulting North America to the absolute dominant global position in hydrocarbon energy production.

Imagine what our nation would look like today in the counter case -- if the new technologies of oil and gas, and the tens of thousands of small and mid-sized businesses had not deployed that technology to release the hydrocarbon riches locked up America's vast shale fields. The numbers make it clear that *but for* the hydrocarbon shale revolution, America may have slipped into Depression. Consider the facts.

Increased domestic production has contributed over $400 billion a year to the U.S. economy and attracted nearly $200 billion in foreign direct investment in America over the past five years alone. It has already driven a 45% reduction in oil imports radically shrinking the GDP-robbing trade deficit. The U.S. is now a *net exporter* of refined hydrocarbons for the first time since 1949, and is on track to become a major exporter of natural gas. And for the coming decade the EIA forecasts some $2 trillion in *private* sector investment in America's oil and gas sector.

This is a total reversal of fortunes from a continent condemned to energy dependence to one awash in production. It is epitomized by the literal physical reversals in the direction of flows in oil and gas pipelines that now carry fuel from the heartland to the coasts, instead of vice versa. We have also seen the mission of

liquid natural gas terminals reverse from import to export, a reversal in refineries from retirements to expansions, a reversal in shipyard construction, and reversal in a dozen-plus states from shrinking to expanding tax receipts and jobs.

The hydrocarbon sector is the single most dramatically expanding part of the entire U.S. economy and has been a shining light of growth and high-value full-time job creation – growth that has come without federal stimulus or new subsidies or preferences. This stands in stark contrast to slow or stagnant growth across nearly every sector of the economy reflected in the extraordinarily slow recovery in jobs and especially for well-paid middle-class full-time jobs.

The U.S. is now on track to become energy independent in economic terms. But that is only part of the story and only a first step towards a far more valuable opportunity. In combination with our North American allies, Canada and Mexico, this continent can quickly become the world's largest supplier of hydrocarbons. The economic and geopolitical implications are far-reaching.

All this begs the obvious question: why wouldn't we be doing everything possible to encourage and accelerate the North American hydrocarbon revolution? Especially in the context of the role of hydrocarbons in high-value manufacturing jobs -- a sector at the very core of the kinds of employment growth so eagerly sought by citizens and their elected representatives.

There is a renaissance in manufacturing now underway and it is not isolated to businesses needed to build the tools, hardware and services specifically for oil and gas extraction, transportation, and processing. The abundance of low-cost energy is also driving a massive resurgence of investments into the energy-intensive manufacturing sector from plastics to fertilizers. The American Chemical Council has catalogued nearly 100 chemical industry investments valued at over $70 billion due to come on line in the next few years alone, and generate over one million jobs and add over $300 billion to the GDP.

And the energy-intensive manufacturing ecosystem's expansion will spill over into and catalyze other manufacturing both upstream and downstream where other businesses will take advantage of the proximity to low-cost high-reliability supplies and suppliers, of the growth in local labor force skills, and benefit from the collateral advances and investments in new underlying technologies. That's how industrial and economic ecosystem's work. This is precisely what policymakers hope will happen when they try to "stimulate" such outcomes.

No fiscal stimulus is required to unleash all these benefits. The key to unlocking the opportunity is to revise – perhaps the better word is "revitalize" – regulations and legislation.

It is inconceivable that the regulatory and legislative structures put in place over the past 40 years are still relevant or constructive in the New Normal of North American

energy abundance. Legislation is needed not just to avoid unintended but needless impediments to the efficient (and safe) operation of America's productive hydrocarbon industries, but also to encourage and accelerate further expansion. And, critically, legislation is needed to permit industry to economically rationalize and optimize the capital-intensive energy infrastructure without regard to the borders with our neighbors – Canada and Mexico - - where we share common resources and compatible cultures.

It bears noting that the dramatic growth in American oil and gas production has not arisen from new discoveries or the opening up of off-limits federal lands, but from new technologies and techniques that manufacture liquid and gaseous hydrocarbons from solid shale rock. Widely reported as "fracking" – hydraulic fracturing – the story is one of deep industrial innovation, digital technologies and software, driven and deployed largely by small businesses not Big Oil. It is a quintessentially American success story and a permanent secular shift in the energy landscape.

Imagine what would be possible with a bold North American initiative to optimize and rationalize each nation's projects and infrastructure. The North American continent has more than double the oil and gas resources of the entire Middle East. Unleashing North America's capabilities would ignite jobs and growth from the Yucatan Peninsula to the Arctic Circle. In less than two decades North America could surpass Middle Eastern production and become the dominant player in global energy markets.

In order to make that happen, I have earlier proposed that we should emulate the 1994 North American Free Trade Act (NAFTA) and create a North American Common Energy Market. Unlike NAFTA, there isn't a free flow of economically sensible cross-border energy projects, from pipelines to transmission lines. Special government permission is often required for activities as ridiculously trivial as a change in corporate name to logical expansion or new construction of pipelines – such as the Keystone XL pipeline which would let Canada essentially displace unfriendly heavy crude imported from Venezuela.

NAFTA has been a resounding economic success for all three nations and a crowning example of American political bipartisanship. As valuable as NAFTA has been, a North American Common Energy Market is potentially bigger.

The North American Energy Infrastructure Act is a vital first step towards this goal and the opportunity to accelerate the deep economic benefits unfolding from the hydrocarbon revolution.

I should note the obvious that America's future is not exclusively anchored in hydrocarbons of course. We won't be choosing between growth from the tech sector versus the hydrocarbon sector. They have grown together and will continue

to do so, and it is growth that is increasingly synergistic as technology lies at the core of the oil and gas revolution.

But the American hydrocarbon sector not only contributes more to the GDP than does Silicon Valley, it has also contributed more to the reduction in the trade deficit, added more jobs, and generated more widespread wealth in more states and thus contributed more revenues and economic recovery.

I am long-term deeply bullish on and have frequently written about the prospects for a new great secular growth cycle arising from emerging technologies. But the oil and gas sector offers the single largest opportunity near-term fuel for more rapid growth – and more jobs across the economy and in dozens of states.

Economic growth is the solution to essentially every problem facing the nation faces today from deficits to entitlement funding, from housing to political dysfunction.

Pundits that say we are at a pivotal point in history are correct. But they are quite wrong about the direction of the change. The New Normal is one of opportunity for expansion and growth. The North American Energy Infrastructure Act can prime that pump.
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Mr. SCALISE. Thanks for your testimony.

Next, Mr. Mears.

STATEMENT OF DAVID K. MEARS

Mr. MEARS. Thank you, Mr. Chairman. Members of the committee, I appreciate the chance to testify before you today on behalf of my department.

Mr. SCALISE. Is your microphone on? Can you check?

Mr. MEARS. Sorry. My apologies. Thank you, Mr. Chairman. I appreciate the opportunity to testify before you today.

Our State supports the underlying goals of this legislation as I understand it. Vermont is a State that has particularly benefited from transmission projects that cross boundaries from Quebec into Vermont. We have experienced lowered electricity prices and have a strong relationship with our counterparts in Quebec and with Hydro-Quebec and the associated owners of the infrastructure.

We do have concerns, however, about this legislation which takes a piece of the approval process for international transboundary projects and breaks it out of the traditional process that we have had and removes the environmental review under the National Environmental Policy Act. Our concerns are specific to this specific project that is under consideration in Vermont but also more broadly with the concept in general.

The specific project in Vermont that we are concerned about is a pipeline that currently runs from Portland, Maine, to Montreal transporting light sweet crude for the most part. And the proposal that is actively under consideration is if it ends up being that Montreal becomes the Locust point for the transmission of tar sands oil, that that oil will in turn be transmitted through the pipeline, the pipeline would be reversed and transmitted from Montreal through Vermont to Portland. The pipeline is decades old. It has not experienced this type of crude oil in the past, which presents greater risks to the environment. The pipeline flows through an area of pristine and natural beauty in the area. It flows past drinking water supplies, over water supplies, wetlands, State parks, et cetera. Vermont is a State that is critically dependent upon its tourism, recreation-based economy for its economic livelihood. And so our concerns are that if this project is exempted from review, that those kinds of considerations, whether or not the pipeline needs to be upgraded or additional considerations around how to ensure safety will not be given proper consideration.

Also, our concern relates to the exemption of this project from the NEPA environmental impact statement requirements, which provide for the opportunity for public involvement and participate in. That is a critical aspect for Vermonters. We have a strong tradition of participatory democracy. It is critical to us that our citizens and communities have the chance to fully understand what the risks and impacts are both to their communities in terms of the direct impacts of the pipeline but also the broader impacts of an international transboundary pipeline such as this one that has implications in terms of climate change and the broader energy markets.

So our concern is not that this pipeline reverse will not happen but that the process of approving it be given full consideration of

all the environmental issues and that we have the chance to participate in the discussion.

We acknowledge and I agree with many of the concerns raised today with the existing process for transmission projects particularly in the oil pipeline context, but simply exempting them from the environmental review and placing a time constraint on to the Federal agencies that are involved in limiting the scope of their review will not achieve the purposes of achieving, as Mr. Mills has suggested we all would like to see, a more robust, efficient North American energy system. I think we all share that goal. I think we can do it in our current system of environmental laws without exempting transboundary projects such as this one, the pipeline reversal that I was referring earlier, from an environment to review.

Thank you for your time.

[The prepared statement of Mr. Mears follows:]

Testimony of Vermont Environmental Conservation Commissioner David K. Mears
Regarding the North American Energy Infrastructure Act
Tuesday, October 29, 2013

Summary

The federal government should continue to perform a full and careful review of international cross-boundary energy transmission projects. The current system involving the issuance of a Presidential Permit issued by the U.S. State Department after an analysis of environmental impacts and less harmful alternatives under the National Environmental Policy Act is a reasonable approach that should not be replaced with a narrow, time constrained review by other federal agencies.

Pipeline reversals, such as the potential reversal of the Portland to Montreal Pipeline to carry tar sands oil, should remain subject to environmental review in the same manner as new projects. Changing the direction of flow and changing the oil from light or medium crude to tar sands oil has the potential to increase the risk of environmental harm from spills. Further, the federal government should also evaluate the air pollution impacts of increased refinery capacity associated with the flow of more tar sands oil through Montreal as well as the impacts of tar sands oil extraction and refining on global climate disruption.

Vermont's natural resources are vital to our economy and we have a strong interest in ensuring that any increased risks to these resources are carefully evaluated. The National Environmental Policy Act provides a process that allows Vermont's citizens both to evaluate and comment on an environmental analysis of projects like the reversal of an oil pipeline. While Vermont has some authority to regulate the siting and environmental impacts of pipeline projects, that authority is not as broad as that of the federal government. Further, Vermont does not have the same resources as the federal government to evaluate the full range of environmental and other impacts of large energy transmission projects.

Testimony

Thank you Mr. Chairman and members of the committee for the opportunity to appear before you today to testify regarding the North American Energy Infrastructure Act.

My name is David Mears, and I am Commissioner of the Vermont Department of Environmental Conservation. My department is responsible for implementing Vermont's laws relating to environmental protection including laws relating to air pollution, water pollution and spill response. The State of Vermont has an interest in this legislation because consideration is being given to modification of the existing Portland to Montreal Pipeline that runs through our state. The modification being discussed would reverse the direction of the flow of the pipeline to allow the transmission of tar sands oil from Canada to Portland, Maine.

Vermont's Governor Shumlin has expressed reservations about this project in light of its environmental risks and supports a thorough federal review of its environmental impacts. Our state is concerned about legislation that would alter the current federal regulatory framework for this kind of project.

The goal of the legislation before you as stated in the opening section is to improve the security and efficiency of our energy market with Mexico and Canada. Improving our ability to move energy across borders more effectively has the potential for multiple benefits. Vermont has, for instance, benefited economically and environmentally from a strong relationship with the Province of Quebec over shared energy projects. The approach taken in the bill before you would, however, shortchange the full consideration of economic and environmental issues necessary to ensure that these complex projects will make affordable and sustainable sources of energy securely and efficiently available to our citizens in the long-term and in a manner that also protects our natural resources.

Our major concern is that a primary result of the North American Energy Infrastructure Act will be to exempt international cross-boundary oil pipelines from (a) the current requirement that such projects obtain a thorough federal review by the State Department and a Presidential Permit under Executive Order 13337, and (b) the associated obligation that the federal government perform an environmental impact review and alternatives analysis under the National Environmental Policy Act. This level of careful federal review is necessary for complex, transboundary transmission projects. A one hundred twenty (120) day review limited solely to consideration of whether the project is in the national security interest, as described in the current bill, is insufficient for this category of project.

Even more concerning, while new pipeline projects would at least be subject to federal agency review, albeit a narrow and time-limited one, modifications to existing pipelines, including flow reversal, would be expressly exempted from any review at all. As a result, a proposal to reverse the flow of oil in the Portland to Montreal Pipeline would not get the careful federal review and analysis of environmental impacts that a project of this significance deserves. An additional consequence of this approach is that the Vermont public would not have the opportunity to review or comment on the federal government's analysis of environmental impacts and alternatives.

Any modifications to a major oil pipeline, certainly changes as consequential as changing the type of oil being transmitted and the direction of the flow, should be subject to a federal review. Both of these changes will increase the risk of direct environmental harms from accidental releases. Tar sands oil has different characteristics than the light to medium crude that the pipeline currently transports – the tar sands oil is more acidic and abrasive. It is also more viscous, which requires that it be pumped under greater pressures than the lighter crude oils. This set of facts raises questions about whether the change in the type of oil will increase the risk of spills. In addition, these characteristics will make responding to spills more challenging. Volatile organic chemicals are released during spills of tar

sands oil with risks of explosion if ignited and of harm to public health if people are exposed to those emissions. Further, the physical characteristics of tar sands oil cause it to sink in water making cleanup more difficult and time-consuming.

The Portland to Montreal Pipeline at issue in Vermont runs across a number of important ecological and economic resources in Vermont including: (a) The Missisquoi River which flows through a National Wildlife Refuge and then into Lake Champlain; (b) the Black River flowing into Lake Memphremagog which is a source of drinking water and an important recreational resource; and (c) the Victory State Forest, an ecologically sensitive area that includes a wildlife management area and a state park. The pipeline also runs close to the drinking water source for Irasburg, Vermont.

Keeping these resources clean and free of oil spills is critical to the ecological health of these areas and also to the region's economy. Vermont's economy is generally dependent upon the natural beauty of its landscapes and its clear waters. The area of Northern Vermont where the pipeline runs is particularly reliant upon recreation. People come from across the Northeastern United States, Eastern Canada and beyond to enjoy fishing, hunting, swimming and boating in the summer, the chance to view the rich colors of our fall foliage, and skiing, snowshoeing and snowmobiling in the winter.

These areas and water bodies are national and, in the case of Lakes Champlain and Memphremagog, international resources. The federal government should bring its considerable expertise and authority to bear to ensure these resources are adequately considered and protected.

In addition to the direct risks to these environmentally sensitive areas, we are also concerned about the secondary air pollution impacts of moving significant volumes of tar sands oil through Montreal. The proposed Enbridge pipeline reversal, a precursor to the use of the Portland to Montreal Pipeline to transmit tar sands oil, has the potential to contribute to air pollution in Vermont. Vermont has unsuccessfully attempted to file comments with the Canadian National Energy Board about the

potential for new refinery capacity associated with the Enbridge pipeline reversal to negatively impact Vermont's air quality. Vermont has at times experienced air pollution transmitted from the Montreal area and increased oil refining in Quebec could increase the frequency of such events. Given the international implications of this issue, and the challenge for a state to influence the Canadian government, it is vital that the federal government play a role in evaluating the potential for increased air pollution transport into the United States associated with pipeline projects.

Another impact associated with tar sands oil pipeline projects is that the extraction, transmission and refining of tar sands oil all contribute to increased carbon emissions at a greater rate than other forms of oil processing. This is of concern to my department because Vermont is vulnerable to the impacts of increased carbon emissions and the associated disruptions to our climate. Our maple sugar industry is at risk due to climate change as is our outdoor recreation sector, particularly the ski industry. Our landscape of working forests and farms is also suffering the effects of climate change due to a range of problems including increases in invasive insects and plants, weather patterns that disrupt traditional planting and harvesting practices, and increased extreme weather events.

Specific to considerations of the impacts of extreme weather associated with climate change, Vermont has seen a substantial increase in flood events as our winters grow shorter and are punctuated by higher frequency, more intense precipitation events. Tropical Storm Irene was a wake-up call for our state and reinforced our interest in doing whatever we can to reduce our carbon emissions. We want the federal government to carefully evaluate the broader risks of transporting tar sands oil across our borders given that the process of capturing and turning this form of oil into gasoline is significantly more energy intensive than other forms of oil.

Finally, Vermonters also have an interest in the world beyond our borders. Many are concerned about the devastation to Canada's northern boreal forests and the loss of water and wildlife resources in

the regions impacted by tar sands oil extraction. These Vermonters deserve the opportunity to comment on the broader national and international implications of transporting tar sands oil across our state.

Careful federal review, including an analysis of environmental impacts, of a project to modify a cross-boundary pipeline is necessary if Vermonters are to have a meaningful voice in the decision to implement such a project. Neither my department nor any other departments in Vermont have the authority or capacity to consider the full range of impacts from this type of project. In Vermont, we have a state land use law, referred to as Act 250, under which we can make decisions about where projects are sited, and can evaluate and require mitigation of some of the environmental impacts of pipeline projects. That law was recently determined to apply to the proposed reversal of the Portland to Maine Pipeline, though it is expected that the owner of the pipeline will sue to overturn that decision.

There are limits on the state's authority, however, due to the need to avoid regulating in the area of pipeline safety which is preempted by federal law and the additional need to avoid running afoul of the Commerce Clause of the U.S. Constitution. Further, my department and our small state does not have the same level of scientific and technical resources available to the federal government to review and evaluate the environmental impacts of massive and complex projects such as new or modified cross-boundary, international pipelines.

It is for these reasons that Vermont's Governor Shumlin wrote to Secretary of State John Kerry asking that the State Department exercise its authority to require a Presidential Permit in the event that the owner of the Portland to Maine Pipeline seeks to reverse the flow of the pipeline and to use it to transport tar sands oil. Similarly, New Hampshire, our sister state to the East does not have an equivalent to Vermont's Act 250 in their state law and has even less opportunity to protect her citizens from the potential negative impacts of a pipeline reversal. Consequently, New Hampshire's Governor

Hassan has also written to Secretary of State Kerry seeking to ensure that the State Department requires the Presidential Permit.

Improving the security and efficiency of our energy transmission systems across our boundaries with Mexico and Canada is a laudable and important goal. I recommend that the honorable members of this committee evaluate other alternatives for expediting the flow of energy across our boundaries with Canada and Mexico, alternative approaches that do not shortchange other important environmental and economic interests in the way that the proposed North American Energy Infrastructure Act would.

Thank you again for the opportunity to testify and I am available to answer any questions.

Mr. SCALISE. All right. Thank you.
Mr. Blackburn.

STATEMENT OF PAUL C. BLACKBURN

Mr. BLACKBURN. Mr. Chairman, Ranking Member, and members of the subcommittee, thank you very much for this hearing on H.R. 3301. My name is Paul Blackburn and I have represented landowners threatened with condemnation by TransCanada and citizens concerned about oil spills and climate change resulting from proposed Keystone XL pipeline. I also plan to represent citizens of Minnesota on the Alberta Clipper pipeline expansion, which would probably be directly affected by this legislation. Various citizens of Minnesota might think about this.

I would say that the citizens have a stake here and their rights and freedoms must be respected. One hundred and twenty days is simply not long enough, simply not long enough to allow citizens to be involved in these particular decisions, and this needs to be looked at in a broader context.

The government offers pipelines a really sweet deal. First off, they get to condemn thousands of parcels of private property and property owners like the farmers and ranchers that I represent in South Dakota take this very personally. Also, once the pipeline is built, FERC guarantees the pipeline company profits forever as long as that pipeline operates, regardless of how much or how little it is used. And I will talk about that in a second.

In contrast, landowners and citizens get a raw deal because they receive little benefit and shoulder many adverse financial and economic impacts. Environmental review here isn't really a problem and so the underlying problem is the crude oil pipeline regulatory process underlying. The one that underlies the NEPA process is deeply flawed. To protect the landowners, the subcommittee should consider reform not just of this particular presidential permit process but of a broader set of issues that are really important.

As I noted, the Alberta Clipper pipeline is currently pending and it is critically important to recognize that the crude oil pipeline regulation process is radically different from the process for natural gas pipelines and for electric transmission lines. You know, applying this law to all three of them the same way doesn't make a lot of sense. FERC does an extensive amount of review in natural gas pipelines, as the prior witness talked about, and the Department of Energy does a great deal, as well as all the regional transmission system coordinators do a lot of work for the transmission line planning. In contrast, the crude oil pipeline regulatory process is kind of the Wild West.

I am going to talk about economics here for little bit. And the reason that is important is because these issues—it is not just national security but it is also the whole entire national interest, and part of that is the economic issue. I am going to talk about some economic things because those kinds of issues should be discussed as part of that process and 120 days is not enough time to consider these kinds of economic issues.

First, Congress should not allow crude oil pipelines to be built until a need for those pipelines is proven. Most regulative utilities have to do this before they get their tariffs guaranteed. This is a

real problem, as shown by 2010 FERC petition filed by Suncor, one of the largest tar sands producers. Suncor argued that Enbridge should not have started construction of the Alberta Clipper pipeline because it was not needed and may never be needed, something that the public doesn't know. Suncor stated—and I will cut to the quote—by the time the Alberta Clipper is finished, Suncor argued "shippers will have paid Enbridge hundreds of millions of dollars before they reach the point, if ever, where the operational benefits the Alberta Clipper justify their cost."

The FERC data in Chart 1—and I would ask Nick to bring up some of my data here—the dark area down there is the imports on the Alberta Clipper pipeline system from Canada. This is FERC data, nothing sophisticated, no statistical analysis. The thinner line above is the pipe capacity. Enbridge built their pipeline in 2010. That is where the line jumps up. Since 2010, they haven't really had any increased imports on that pipeline.

So at the same time Figures 2 and 3—we will move to Figures 2 and 3—show that Enbridge's FERC-approved tariffs have approximately doubled and their revenues have skyrocketed, so that is the tariffs going up and this is—Figure 3, please. That is the revenues going up. The reason the Alberta Clipper pipeline was built prematurely was only partially due to the economic recession. Another reason is the fact that the Alberta Clipper pipeline and the first Keystone pipeline were brought online at almost exactly the same time resulting in too much capacity relative to market needs.

As shown by Figures 4 and 5, new supply development in Canada is steady. That is the black line. It is a pretty straight line, little black line. The rest of those are all the CAPP forecasts, the Canadian Associated Petroleum Producers, forecasts show they tend to overestimate what they need. And then Figure 5, the light blue area of the top there is the imports on the first Keystone pipeline. So the dark blue is Enbridge and all the new oil that came out of Canada went on TransCanada's first pipeline. So that is why there isn't any more new oil flowing on Enbridge's system.

Now, if the proposed Keystone XL pipeline is brought online in 2012, the likely result would be that even greater losses for Enbridge's shippers and ultimately consumers. Looking at the future, if Keystone XL comes online at about the same time that Enbridge completes its similarly sized expansions to the Gulf Coast, together totaling 1.7 million barrels per day of new capacity, then it is likely that consumers will unnecessarily pay billions of dollars at the pump.

The media frames this as a conflict over Keystone XL as relating only to Administration delay to appease environmentalists, but this delay also——

Mr. SCALISE. If you could start wrapping up.

Mr. BLACKBURN [continuing]. Provides great benefit to TransCanada's chief competitor Enbridge.

I would just say that these kinds of economic issues are the kinds of things that the Federal Government should look at, and yet in 120 days it is something not possible to look at this economic analysis. The kind of analysis done in Canada by the National Energy Board and the kind of analysis done at States for need is critically important to determine if citizens are really protected. One

hundred and twenty days is not enough. I would say that the Congress should really try to amend this entire system and make it rational for citizens so that we aren't just simply building pipelines without a clear understanding of why and whether they are really in the citizens' economic interests.

Thank you.

[The statement of Mr. Blackburn follows:]

Subcommittee on Energy and Power
Committee on Energy and Commerce
United States House of Representatives
Hearing on the "North American Energy Infrastructure Act"
H.R. 3301

Testimony of Paul C. Blackburn
Attorney and Environmental Consultant
Blackcreek Environmental Consulting

Tuesday, October 29, 2013

Introduction

Mr. Chairman, Ranking Member, and members of the Subcommittee, thank you very much for this public hearing on H.R. 3301, which addresses the importance of effective and fair crude oil pipeline regulation.

My name is Paul Blackburn and I am an attorney in private practice and the principal of Blackcreek Environmental Consulting. Although I have represented and continue to represent landowner groups and national and local environmental organizations on matters related to pipeline permitting and safety, I do not speak on behalf of any organization today, nor have my comments been subject to approval by anyone other than myself.

I represented Dakota Rural Action, a nonprofit organization that represents ranchers and farmers throughout South Dakota, during the South Dakota Public Utilities Commission hearing on the Keystone XL Pipeline. I also prepared comments on draft and final environmental impact statements prepared pursuant to the National Environmental Policy Act review of the Keystone XL Pipeline, and have authored reports on defective pipe steel and the lack of adequate oil spill response planning and preparation in the northern Great Plains. Perhaps most importantly, I have spoken to and with hundreds of landowners whose private property may be taken by the

government to allow construction of the proposed Keystone XL Pipeline. These persons are also regulated entities and their rights and freedoms must be respected.

Much is made of the impact of government regulation on TransCanada, the proponent of the proposed Keystone XL Pipeline. Actually, the government offers it a pretty sweet deal, because if its pipeline is approved TransCanada gets to condemn thousands of parcels of private property and the federal government guarantees it a profit on its pipeline regardless of how much or how little it is used, how badly it is managed, or how much damage it does if it ruptures. Thanks to federal regulation, pipeline companies operate with very little commercial risk, because these risks are offloaded onto consumers by the Federal Energy Regulatory Commission ("FERC").

Much less concern is expressed for the potentially severe and permanent impacts of this proposed pipeline on landowners along the route and their families, farms, ranches, businesses, communities, and environment, including our global climate. Receiving a condemnation notice in the mail means that a landowner will likely spend scores, if not hundreds of hours – involuntarily – to help a major multinational corporation advance its private financial interests. Landowners also spend thousands and thousands of dollars on legal representation and experts, which costs are not paid for by tax dollars or passed onto consumers through pipeline tariffs.

Similarly, millions of other citizens are concerned about the Keystone XL Pipeline's climate change impacts, risk of oil spills, and other adverse environmental and health impacts in Alberta and along the pipeline. They have found that this pipeline would represent a decades-long commitment by our country to the dirtiest most damaging oil production on the planet, and that there are many serious environmental consequences that must be avoided. Regardless of one's position on this pipeline, such citizen commitment should be respected.

Landowners and other citizens have a right to protect their interests in a fair process, but taken as a whole the regulatory process for the Keystone XL Pipeline – other than the Environmental Impact Statement review – has been unstructured, chaotic, and heavily biased against them. The National Environmental Policy Act review was extensive not because something is wrong with it, but because it reflects a deeper dysfunction arising from a lack of federal permitting for crude oil pipelines, such as exists for natural gas pipelines. For citizens and landowners, the most rational and useful part of the Keystone XL Pipeline review process has been its environmental review, because it provided them with information and opportunities to be heard on environmental and social issues when none others existed. The Subcommittee's action on H.R. 3301 has the potential to demonstrate its respect for the burdens that pipeline companies may force landowners to bear, or to demonstrate its disregard for their rights and freedoms.

H.R. 3301 Makes a Flawed Process Worse

H.R. 3301, Section 2, states:

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

I agree that a more uniform, transparent, and modern process is needed, because the current permitting process is scattered among too many states and federal agencies, and is therefore unpredictable. As I have told many, many landowners, the current permitting "structure," and I use this term loosely, is a structure that only a pipeline industry attorney could love.

Typically, the "regulatory compact" between energy utilities and the public requires that a utility prove that a project is needed and that it commit to mitigate harm caused to citizens and the environment, in exchange for which it is granted the privilege of taking private property and the legal right to guaranteed profits through a government-approved tariff structure. For regulated electric and natural gas utilities, this compact is usually arbitrated by a single agency that is responsible for determining need, route, location, mitigation, reasonableness of cost, and future tariff rates. Such agency also usually authorizes takings of private property if the project is approved. For example, FERC is essentially a one-stop shop for interstate natural gas pipeline permitting. Although other agencies are certainly involved in natural gas pipeline approvals, at least there is centralized coordination of the process.

In contrast, interstate crude oil pipeline regulation involves dozens of state and federal agencies with indistinct and overlapping responsibilities – and no one agency has overall management authority. Most citizens find this situation very confusing and ineffective.

To protect landowners, I suggest that the Subcommittee consider H.R. 3301 in a broader regulatory context. The bill, as drafted, incorrectly focuses on only a small corner of this regulatory morass, and relatively speaking not one that is particularly important. Therefore, the Subcommittee should not focus on the Presidential Permit process in isolation, but should also consider a number of more important regulatory issues, including the following.

1. No Coordination Among the States and with the Federal Government with Regard to Determination of the Need for Interstate Crude Oil Pipelines Resulting in Premature Pipeline Construction and Increased Costs at the Pump

Most rate-regulated utilities must prove to a regulator that new infrastructure is needed and is reasonably priced before the regulator commits the public to paying for the project through tariffs. Absent such review, there is a great risk that utilities would construct projects

not because they are needed, but to increase tariff-based profits. In contrast, crude oil pipelines are regulated through a bizarre mechanism in which individual states may determine the need for interstate pipelines (most do not), but FERC approves tariffs without meaningful review of project need or cost. Even though some states may consider need, there is doubt about their authority, given the Constitution's Interstate Commerce Clause, to determine whether an interstate pipeline is needed. The failure to conduct a robust national need evaluation before committing consumers to pay for pipelines has resulted in unneeded pipeline capacity and increased consumer cost.

That the lack of federal review of pipeline need is a problem is shown by *Petition of Suncor Energy Marketing Inc. for Declaratory Order and Establishment of Near-Term Rate Treatment*, FERC Docket No. OR10-5-000 (Jan. 13, 2010). In this petition, Suncor, joined by Imperial Oil, Husky, Citgo, Flint Hills, Nova Chemical, Total, Marathon, and Canadian Oil Sands (all shippers of crude oil on Enbridge pipelines) asserted that Enbridge should not have started construction of the Alberta Clipper Pipeline when it did because it was not needed. Suncor stated:

> [S]hippers will experience annual rate increases on the Lakehead System (through implementation of the Alberta Clipper Surcharge) of 23% to 30% (based on 2009 rates), which will result in a total additional payment to Enbridge of $965 million over the first five years of the Alberta Clipper's operation. Over $428 million of these payments represent Enbridge's embedded profit. Shippers will have paid Enbridge hundreds of millions of dollars before they reach the point (if ever) where the operational benefits of the Alberta Clipper justify their cost.

Id. at 22-23 (footnotes omitted; emphasis added). Suncor added:

> Shippers will pay Enbridge nearly a billion dollars in increased Lakehead System rates over the first five years of the Alberta Clipper's operation (representing $428 million in Enbridge's

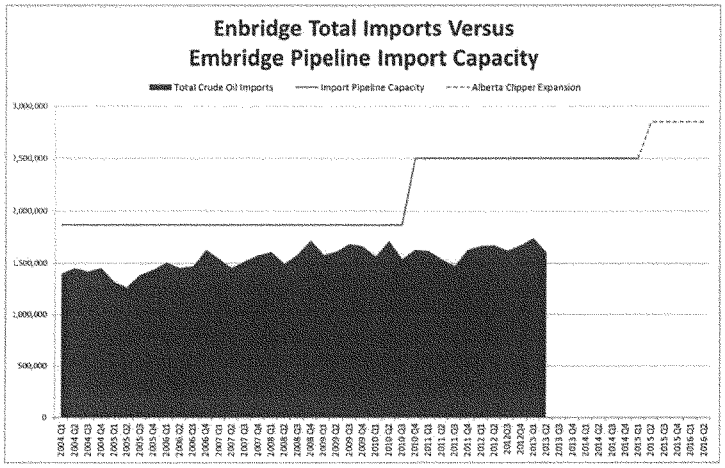
> embedded profit) for poorer service and greatly diminished savings.

Id. at 30. Thus, according to Suncor, Enbridge built the Alberta Clipper Pipeline prematurely, resulting in hundreds of millions of dollars in excess shipping costs.

In response, FERC did not review the petition on its merits. It merely ruled that the shippers should have requested that Enbridge not construct the pipeline sooner than they did. FERC did not consider the potential financial impacts of premature construction on consumer pocketbooks.

FERC data since the Suncor Petition was filed shows that the Alberta Clipper Pipeline was in fact built prematurely, because, as shown in Figure 1, below, imports on Enbridge pipelines have been almost flat since 2008.

Figure 1



At the same time, the FERC-approved tariffs have approximately doubled, for example, Figure 2 shows the tariff rate from the international border to Lockport, IL.

Figure 2

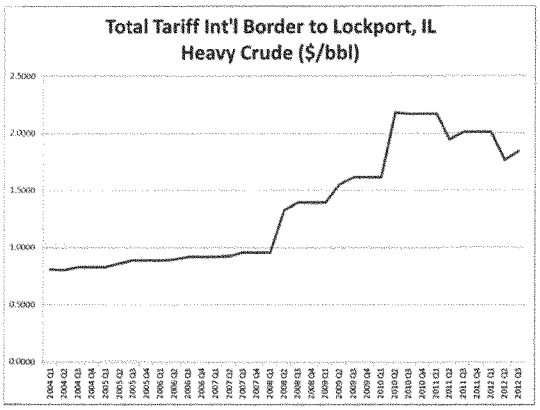
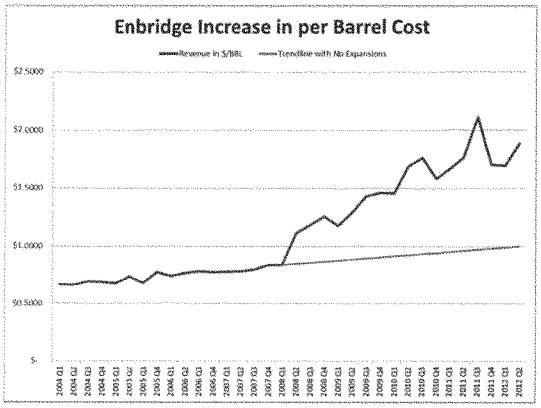


Figure 3 shows that Enbridge's revenues have skyrocketed.

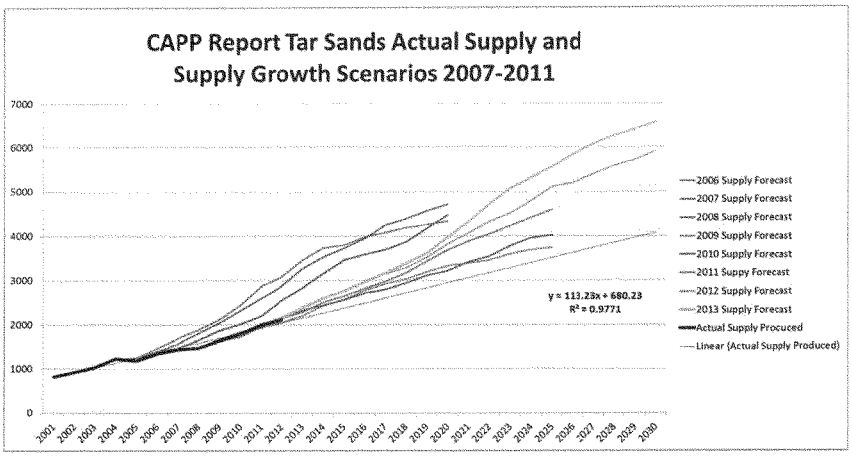
Figure 3



The reason that the Alberta Clipper Pipeline was built prematurely was only partially related to the economic recession. Another reason is the fact that the Alberta Clipper Pipeline started operations at almost the same time as the first Keystone Pipeline, such that too much import capacity was brought online simultaneously relative to market needs. Figure 4 charts data from

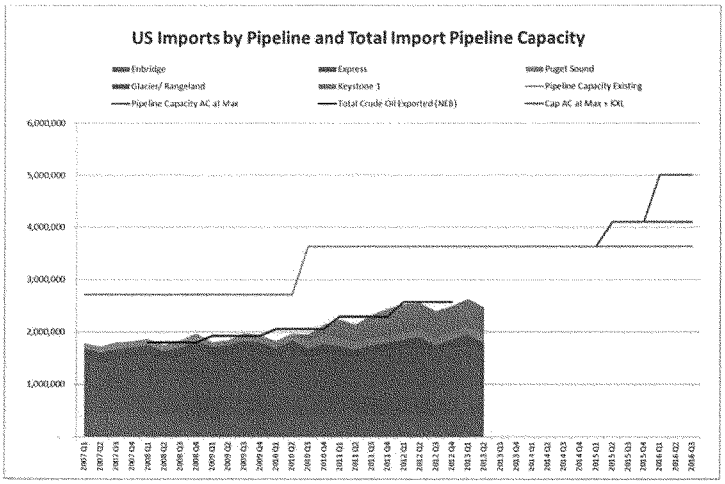
the Canadian Association of Petroleum Producers ("CAPP") showing that supply growth from the Tar Sands has been steady over the past decade, such that demand for new pipeline capacity is predictable, averaging about 113,000 bpd greater supply every year. To be clear, not all Canadian supply is exported to the U.S.; some of it remains in Canada.

Figure 4



Since the growth in new supply from Canada is limited, market demand for new pipeline capacity is also limited, and TransCanada and Enbridge are competing to transport this limited new supply. As shown by the following chart, the vast majority of new imports from Canada since construction of the Alberta Clipper Pipeline have flowed through the Keystone Pipeline.

Figure 5



TransCanada's success in taking new market share from Enbridge was probably due to TransCanada's novel commercial approach that relies on very long term take-or-pay (use-it-or-lose-it) contracts. These contracts give TransCanada's shippers a substantial financial incentive to use the Keystone Pipeline instead of the Enbridge system. This being said, TransCanada constructed the Keystone Pipeline with an approximate 100% cost overrun, due largely to increased materials and labor costs because of competition for these resources with other pipeline companies, including Enbridge. These cost overruns from unnecessary competition are being passed onto consumers.

It is likely that increased shipments of crude oil from the Bakken Formation have helped mitigate Enbridge tariff increases, but due to rail and competing pipelines the net increase in flow of Bakken oil on Enbridge's system has been limited.

Moreover, if the proposed Keystone XL Pipeline had been brought online in 2012, and assuming that TransCanada's commercial structure continued to give it advantage over Enbridge,

the likely result would have been dramatically decreased utilization of the Enbridge system, and even greater losses for Enbridge's shippers and, ultimately, consumers. Thus, delay of the Keystone XL Pipeline has probably saved U.S. fuel consumers hundreds of millions of dollars in excess tariff costs. Looking to the future, if the proposed Keystone XL Pipeline comes online at about the same time that Enbridge completes its similarly-sized expansions to the Gulf Coast (expansions of Lines 61 and 67, and Seaway and construction of Flanagan South), together totaling approximately 1.7 million bpd of new capacity, then it is likely that consumers will pay billions at the pump for prematurely constructed pipeline capacity. From a purely commercial point of view, it makes no sense to bring this much new pipeline capacity onto the market at the same time.

Although the media frames the conflict over the Keystone XL Pipeline as relating only to Administration delay to appease environmental activists, this delay has also provided great benefit to TransCanada's chief competitor, Enbridge, and the crude oil shippers who rely on its monopoly services.

Ultimately, consumers pay for the lack of a comprehensive federal permitting process. The economic waste caused by premature construction of the Alberta Clipper Pipeline could have been prevented if federal law required FERC to confirm that a pipeline is needed before it is constructed, as happens for most rate-regulated utilities. In addition, it appears that neither state agencies nor FERC review project costs before they are rate-based, such that consumers have no assurance that they are not paying for bloated development and construction budgets.

2. A Lack of Clarity about the Roles of Federal and State Agencies

There is no lead federal agency for crude oil pipeline regulation. Instead, the Pipeline and Hazardous Materials Safety Administration ("PHMSA") regulates pipeline safety, PHMSA and the U.S. Environmental Protection Agency spilt oil spill response authority, FERC regulates rates, DOS regulates international crossings, and a variety of federal agencies regulate specific matters.

States may or may not regulate new crude oil pipelines. Those that do variously regulate routing, siting/mitigation, determination of need, pipeline safety (if delegated), oil spill response, and various pollution issues. Local governments may also regulate pipelines through zoning laws, franchise agreements, pipeline abandonment, and other matters.

Sorting out which agency is responsible for what requires a law degree, days of research, and regulatory experience, that landowners and other citizens rarely have. Even with careful research, vague laws and regulations at all levels create ongoing questions and uncertainties in the overall regulatory process that breed only suspicion and distrust among citizens. Since oil pipeline executives carry regulatory attorneys 24/7 in their holsters, they enjoy a significant advantage over landowners and citizens, who can rarely find, much less afford, an attorney who is familiar with these laws. A federal permit process would largely solve most of these problems.

3. Little to No Coordination Among the States and the Federal Government for Routing of Interstate Crude Oil Pipelines

Since there is no primary regulatory agency that permits new interstate crude oil pipelines, there is no significant regulatory coordination with regard to route among federal, state, and local agencies. Should a state wish to reroute a pipeline that affects the route in

another state, there is no formal process to do this. If the neighboring state has not established a routing permit process, coordination may not be possible absent state enabling legislation.

When a landowner asks which agency is in charge of routing a pipeline, the answer is, "It depends," which is not a good answer for citizens. Some states have passed laws to allow a state agency to determine the route of an interstate crude oil pipeline. Other states have not. For example, Montana and Minnesota and now Nebraska regulate pipeline route, whereas South Dakota and Kansas and other states do not. However, South Dakota regulates pipeline "siting," which generally means construction mitigation. If a landowner lives near federal land or an Indian reservation, then the route may also be impacted by federal or tribal decisions. Thus, landowners may have an opportunity to seek government reroute of a project, or they may not.

Oddly enough, in the initial Keystone XL Pipeline Environmental Impact Statement ("EIS"), the DOS evaluated multiple alternative routes even though no federal agency and no state government had the authority to require many of them. This focus on specious routes and the lack of federal or state authority to route a pipeline in Nebraska meant that the first EIS did not adequately consider an alternative route around the Sand Hills in Nebraska. The Final EIS on page 4-41 states, "avoidance of the Sand Hills topographic region [and the Ogallala Aquifer] are not considered appropriate screening criteria for the identification of alternative routes." As a result, citizen pressure in Nebraska produced a new state routing law, and this was the underlying reason for most of the additional environmental review.

4. No National Planning for Development of Interstate Crude Oil Pipelines

Much of the waste caused by the current development competition between Enbridge and TransCanada, and most routing uncertainty, could be avoided by national planning for petroleum pipeline expansions and federal determination of need for proposed crude oil pipeline projects.

Crude oil pipelines are the least common, most monopolistic, one of the most expensive forms of transportation infrastructure, such that it should be planned. A major redesign of the country's crude oil pipeline system is being demanded to serve Canadian crude oil interests, but this redesign appears to be uncoordinated and is therefore wasteful.

5. No Opportunities for Public Involvement in Pipeline Safety Regulation as it Applies to Specific Crude Oil Pipelines

Landowners and other citizens are justifiably concerned about pipeline safety, yet PHMSA does not conduct pipeline-specific public hearings, except for comments on proposed safety waivers, and almost all pipeline-specific safety information in PHMSA's possession is secret, although limited amounts of information may be accessible but only after arduous Freedom of Information Act requests. This secrecy engenders deep distrust of the federal government and industry by landowners and citizens. Citizens would like assurances, other than boilerplate bald-faced ones, that PHMSA is doing its job. Due to PHMSA's current regulations and practices, landowners and other citizens have no ability to determine whether PHMSA is in fact doing its job – until after a rupture. Public oversight is one of the most effective means of assuring that agencies and the industry comply with law, but there is no practical opportunity for public watchdogs to operate with regard to pipeline safety.

6. No Opportunities for Public Involvement in Oil Spill Response Planning

Landowners and other citizens are justifiably concerned about petroleum pipeline spills, yet PHMSA excludes them from having any meaningful knowledge about pipeline spill response planning and spill response capabilities, even though such information is available from other federal agencies for tanker and refinery spills and from states that have enacted their own oil spill response laws. Spill response planning is required by the Oil Spill Act, a part of the Clean Water Act, which requires public disclosure of pipeline spill response planning materials. Regardless,

PHMSA redacts all substantive information from pipeline spill response plans released to the public, making spill response planning and preparation, for all practical purposes, a secret. This secrecy, combined with high-profile spill response failures, means that landowners and other citizens do not trust federal regulators or the industry.

7. Assignment of the Presidential Permit Process for Crude Oil Pipelines to the DOS

There is no rational reason to assign Presidential Permit review for crude oil pipelines to the Department of State, particularly as there are other federal agencies, including FERC, the Department of Energy, and PHMSA, which have substantially greater expertise than DOS with pipeline need, engineering, and economics. Moreover, the DOS is inappropriate because it has minimal statutory authority over matters with substantial domestic impacts and that involve citizen engagement. It was very odd to have the Department of State, which primary engages with foreign governments, conduct hearings about impacts to America's heartland. Since the G.W. Bush Administration, the DOS has not promulgated regulations for this process pursuant to the Administrative Procedures Act, which its sister agencies (FERC and DOE) have done for their Presidential Permit reviews. Instead, the DOS relies on a simple "fact sheet," which is vague and poorly structured.

H.R. 3301's Exemption of Border Crossings from Environmental Review Will Not Fix the Problem

Rather than fix any of the foregoing real problems related to regulation of crude oil pipeline development, H.R. 3301, Section 3(b)(3) exempts international boundary energy facility permits from federal environmental review and requires an extremely accelerated review timeframe.

If H.R. 3301 had been in effect for the Keystone XL Pipeline review, then the only state in which an environmental review would have been performed is Montana, because no other

state along the route has a mandatory environmental review process. If no comprehensive environmental review had been performed, then almost all of the landowners along the pipeline route would have had no access to information about the pipeline's impacts on them or possible ways to mitigate these impacts. Such lack of information would not have limited public involvement; it would have increased citizen fear, suspicion, and opposition, and resulted in an even more unpredictable citizen responses.

Also, if H.R. 3301 had been in effect, the climate change impacts of the proposed Keystone XL Pipeline would not have been assessed by the federal government. Thus, H.R. 3301 should be viewed as yet another attack by climate change deniers and the fossil fuel industry on efforts to protect our planet from excessive warming. Likely, some of the supporters of this bill see it as an attempt to forestall future debates about the climate impacts of fossil fuel imports and exports. H.R. 3301 won't prevent citizen action; it will just redirect it into unpredictable venues.

Far from "modernizing" pipeline regulation, elimination of environmental review for border facilities would simply help drive the regulatory process underground – hardly a sign of good government. For many landowners and citizens in the states impacted by the proposed Keystone XL Pipeline, and citizens of other states who will pay for its financial and environmental costs, the environmental review process was often the only process that helped them understand the project and that made procedural sense. For many citizens, it was their only opportunity to participate in this important national decision. Given the sorry state of the underlying pipeline regulatory "structure," if federal environmental review of the overall impacts of import and export pipelines is terminated then impacted landowners and citizens would have little to no opportunity to understand and comment on these crude oil pipeline projects. As

noted, in this situation, fear and suspicion will abound and citizen action will become increasingly unpredictable.

Moreover, exemption of import and export pipeline decisions from environmental review means that landowners and other citizens will have further evidence that the federal government is not on their side and is not to be trusted or respected. H.R. 3301 does not provide a more level playing field for all stakeholders. Instead, it lets pipeline companies burrow deeper into chaotic and complex regulatory terrain and offers landowners and citizens only a regulatory firing squad. H.R. 3301 does not foster good government and make pipeline regulatory review more predictable; it pushes it further backwards into Wild West days.

The EIS process for the proposed Keystone XL Pipeline in fact was not the primary driver of delay. Rather, all of the reworks of the EIS and the President's denial of the original permit were directly related to demands for a reroute in Nebraska and citizen outrage that no government permit process in Nebraska protected their property and environmental rights. Unlike the state permitting processes in South Dakota and Montana, which proceeded without substantial disruption, the complete lack of regulation in Nebraska meant that the only recourse citizens had was to their legislature, which resulted in passage of a new state routing law. Pursuant to this law, the state rerouted the proposed Keystone XL Pipeline and this required a new EIS.

In contrast, the environmental review and Presidential Permit processes for the first Keystone Pipeline and the Alberta Clipper did not result in substantial delays. In fact, I am not aware that environmental review and border crossing permits have in the past generally hindered crude oil pipeline construction.

Thus, what primarily delayed the review process for the proposed Keystone XL Pipeline was not too much regulation, but too little regulation. If landowners and citizens in Nebraska had been provided – from the start – with an opportunity to defend their properties, families, homes, and businesses, it is very likely that the process there would have unfolded more predictably.

Suggested Improvements to the Regulatory Review Process for New and Modified Crude Oil Pipelines

The regulatory review process at issue demands reconstruction, not tearing down the best part that proves how bad the rest of the structure is. A rational regulatory process would include the following.

- Federal permitting for new and modified crude oil pipelines by FERC, along the lines of that currently provided for natural gas pipelines, which confirms the need for new pipelines.
- Continued National Environmental Policy Act review so that citizens can learn about and comment on the significant environmental impacts of these major infrastructure projects, and thereby help to make our country cleaner, safer, and more secure.
- National planning for pipeline development to ensure that our nation's crude oil pipeline system is efficient and economical.
- A formal pipeline safety permitting process that provides the public with pipeline-specific safety information and allows public input into critical safety decisions.
- Public participation in petroleum pipeline spill response planning, so that citizens can determine if companies are truly ready to respond to spills.

Given TransCanada's unwise response to citizen concerns in Nebraska, it is likely that the crude oil pipeline industry opposes all new regulation. However, rational regulation will increase the stability of their development process because it will allow citizens to be involved in predictable

ways. Rather than oppose all new regulation on philosophical grounds, the industry should take a lesson from the chaos in the Keystone XL Pipeline process and support broader regulatory reform to create a more rational, comprehensive, open, and transparent federal permit process.

If Congress enacts H.R. 3301, the likely result will be less public information, more citizen opposition, and less opportunity for rational public debate – not better government.

Mr. SCALISE. All right. Thank you.
Mr. Burpee, you are up next.

STATEMENT OF JIM BURPEE

Mr. BURPEE. Mr. Chairman, ranking member, and members of the subcommittee, thank you for the privilege of being here today.

The Canadian Electricity Association is the authoritative voice of the Canadian electricity sector representing generators, transmitters, distributors, and marketers of many ownership classes. With one limited exception, CEA members do not hold presidential permits issued by DOE for U.S. segments of international power lines, but they are impacted by considerations related to the issuance of these permits. Also, many of our marketing members are authorized by DOE to export electricity to Canada.

The draft bill offers the opportunity for a dialogue on how well the permitting processes in Canada and the U.S. are working and on the prospects for greater synergies. In that spirit, my remarks will focus on the following: the strength and benefits of electric integration, the value of new international power lines, recent modernization of Canadian legislation governing infrastructure development and the robustness of environmental reviews thereunder, and aligning the respective regulatory processes to enhance infrastructure development and cross-border trade.

The integration of the North American electric grid offers numerous advantages to consumers in both countries, including operational efficiencies and greater access to low-carbon resources. Such access is critical to many U.S. States along and beyond the border as electricity exports from Canada have historically played a key role in their supply nexus, thereby assuring adequate supplies of electricity.

Physical and market linkages between Canada and the U.S. are further enhanced by common operational and commercial rules such as the mandatory reliability standards developed by the North American Electric Reliability Corporation that assure both a reliable and secure supply of power across the North American grid.

New cross-border linkages will further enhance our trading relationship by supporting growth in low-carbon resources assuring reliability and offering benefits tailored to the economic needs and public interests of local jurisdictions involved. More broadly, these benefits are just some of the factors driving a need for hundreds of millions of dollars of investment in new electricity infrastructure in North America over the next 20 years.

Understanding the importance of enhanced infrastructure in Canada and at the same time recognizing the need to modernize regulatory requirements to facilitate such development, the Government of Canada recently updated permitting and review processes for major infrastructure projects with a focus on establishing clear timelines, reducing duplication and regulatory burdens, strengthening environmental protections, and enhancing consultation with aboriginal peoples.

I would stress these reforms have not come at the expense of Canada's robust environmental review process. Under the modernized regime, there will be continuity in the performance of the same high-quality reviews but with more flexibility and efficiency

built in. Moreover, these updates have included the adoption of more stringent enforcement measures. CEA believes that greater efficiencies in review processes can and must be compatible with support for comprehensive environmental protection and stakeholder consultation requirements.

Turning to the draft bill, CEA views it as an opportunity for dialogue and whether the permitting processes in Canada and the U.S. stands to benefit from closer alignment. CEA understands that experience with the DOE's processes is one of general satisfaction. However, we respectfully suggest that there are benefits to be gained for modernizing these processes. For example, DOE states that it requires 6 to 18 months to issue a presidential permit. However, the record reveals a trend of lengthy delays. Likewise, DOE export authorization requirements would also benefit from modernization. Indeed, it is unclear if there was anything governed under current DOE export authorizations that is not addressed through separate market or regulatory mechanisms.

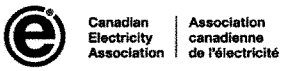
Accordingly, modernizing these processes would not only present benefits in terms of enabling DOE to better meet its own time commitments but would also align more closely with the recent establishment of fixed deadline for completion of corresponding reviews in Canada. To their credit, both DOE and its counterpart in Canada, the National Energy Board, have recognized the need for reform and are beginning to take action. In view of this, CEA recently recommended to the Canada/U.S. Regulatory Cooperation Council that DOE and the National Energy Board cooperate on modernizing the respective processes under the auspices of a formal bilateral initiative to align our two countries' regulatory systems.

Based on all of these themes, CEA wishes to acknowledge and applaud the specific principles underlying the draft bill which proposes the following: establishment of fixed timelines for permitting processes, modernization of procedures to avoid duplication of existing market and regulatory measures, and greater efficiencies in project reviews.

To conclude, CEA supports efforts to address the cross-border piece of the larger energy infrastructure and trade puzzle in North America and to ensure development of a 21st-century grid that is facilitated by 21st-century regulatory regime. CEA looks forward to continuing engagement with the subcommittee on this important topic.

Thank you again for this opportunity and I would be happy to answer any questions.

[The prepared statement of Mr. Burpee follows:]



Subcommittee on Energy and Power
Committee on Energy and Commerce
United States House of Representatives

Hearing on H.R. 3301, "The North American Energy Infrastructure Act"

Testimony of Jim Burpee
President & CEO, Canadian Electricity Association

Tuesday, October 29, 2013

Introduction

Mr. Chairman, Ranking Member and members of the subcommittee, thank you very much for the privilege of being here today.

My name is Jim Burpee and I currently serve as President & CEO of the Canadian Electricity Association ("CEA").[1] CEA is the authoritative voice of the Canadian electricity industry, promoting electricity as a key social, economic and environmental enabler that is essential to North America's prosperity. CEA members generate, transmit, distribute and market electric energy to industrial, commercial and residential customers across Canada and into the United States every day. Our diverse membership includes provincially-owned and investor-owned utilities, many of which are vertically-integrated; independent power producers (several of which also own assets in the United States); municipally-owned local distribution companies; independent system operators; and wholesale power marketers.

With one limited exception, CEA members do not hold Presidential Permits issued by the U.S. Department of Energy ("DOE") for U.S. segments of international power lines ("IPLs"). Rather, they are the holders of applicable permits for the segments located in Canada. Nevertheless, they are impacted by considerations related to the issuance of a Presidential Permit for the U.S. side of any given IPL. Moreover, many of our wholesale marketer members do hold DOE authorizations to export electricity to Canada.

CEA views the introduction of H.R. 3301 as an opportunity for broader dialogue on how well the respective permitting processes in Canada and the U.S. for IPLs and electricity exports are working, and on where there can be better synergies in the approaches utilized on either side of the border with the aim of deriving maximum efficiency, while protecting consumers and the environment. In that spirit, my remarks today will focus on the following topics: (1) the strength and benefits of the existing electricity relationship between Canada and the United States; (2) the

[1] This testimony represents the position of CEA as an organization, but not necessarily the views of any particular CEA member with respect to any issue.

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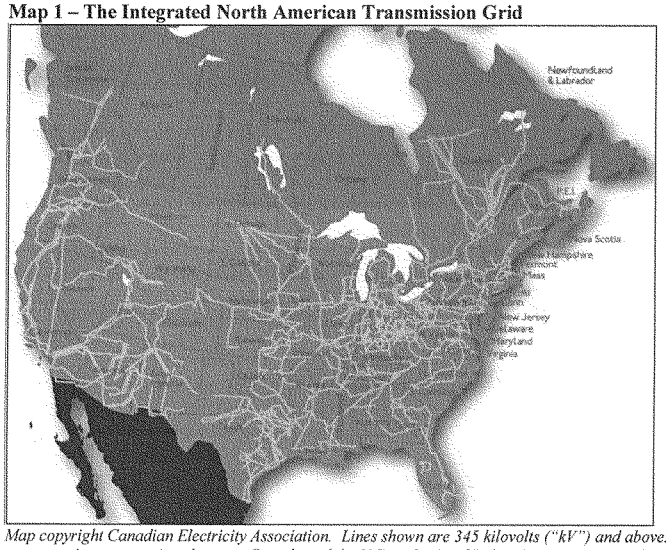
value of new IPLs in the current landscape of widespread need for electricity infrastructure investment; (3) recent modernization of Canadian legislation governing infrastructure development and the robustness of environmental reviews thereunder; and (4) alignment of Canadian and U.S. regulatory processes to enhance cross-border electricity infrastructure development and trade.

1. The Canada-U.S. Electricity Relationship

Electricity plays an integral role in the vibrant bilateral energy relationship, which itself is a pillar of the broader flow of two-way trade that is without compare anywhere in the world. There are more than 35 electric transmission interconnections between the Canadian and U.S. power systems, which together form a highly integrated North American grid (see Map 1 below).

These physical linkages offer numerous advantages to both countries: (1) higher level of reliable service for customers through enhanced system stability; (2) efficiencies in system operation; (3) efficiencies in fuel management; (4) opportunities to use power from nearby markets to address local contingencies; and (5) expanded access to low-carbon and competitively-priced resources.

Map 1 – The Integrated North American Transmission Grid

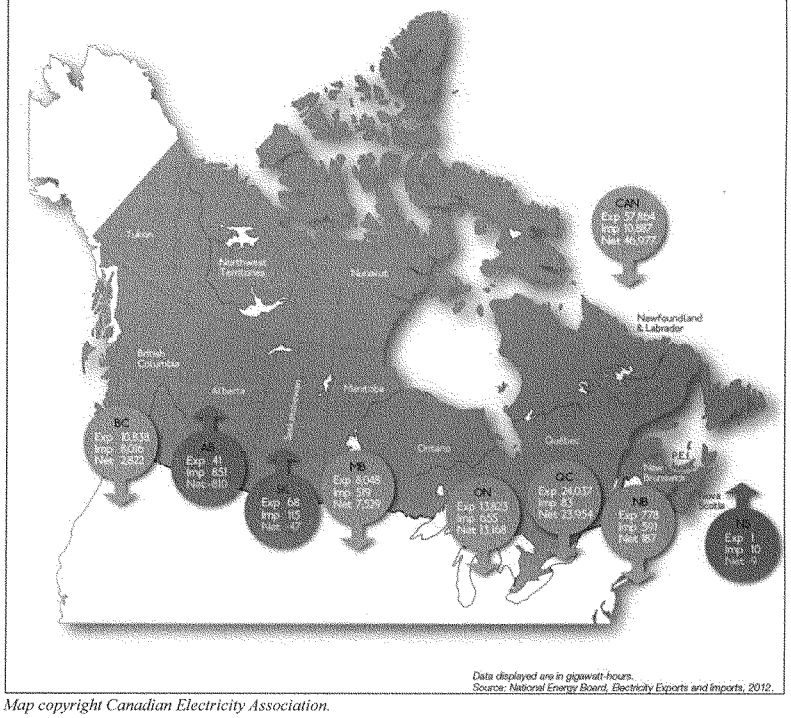


Map copyright Canadian Electricity Association. Lines shown are 345 kilovolts ("kV") and above. There are numerous interconnections between Canada and the U.S. under 345 kV that do not appear on this map.

The linkages between the Canadian and U.S. grids have also enabled steady growth in a continent-wide electricity marketplace. Trade occurs at a range of points across and beyond the border, with supply fulfilling demand in an efficient, cost-effective manner (see Map 2 below).

Map 2

Electricity Exports and Imports Between Canada and the U.S. (2012)



Map copyright Canadian Electricity Association.

An Open, Inclusive Trading Regime

Electricity trade between Canada and the U.S. usually goes unnoticed, reflecting how routine and reliable a transaction such exchanges have become. Likewise, the origin of the electrons being used is rarely considered. Crowds cheering on the Vancouver Canucks might never contemplate

that electricity generated in the U.S. could be illuminating the arena. And the manufacturer in Michigan may be unaware that electricity from Canada is powering its assembly line.

Historically, electricity exports to the U.S. have represented 5-10% of total electric generation in Canada. The majority of these exports involve the sale of surplus output from provinces with major hydropower resources, such as British Columbia, Manitoba and Québec. Export volumes from Ontario have also risen more recently, making the province the second largest exporter for several years. In 2012, nuclear and hydropower comprised just under 80% of Ontario's supply.[2]

The bulk of electrons delivered across the border from Canadian generators to U.S. customers are therefore derived from clean, non-emitting sources.

While a small share of overall U.S. power consumption is composed of imports from Canada, these sales are nevertheless critical to the U.S. supply mix in many areas along and beyond the border. For example, in 2010 exports from Canada represented the following percentages of total retail sales in these jurisdictions: Vermont, 38%; Maine, 18%; Minnesota and North Dakota (combined), 12%; New England (all states), 10%; New York, 6%; and Michigan, 6%.[3]

And while U.S. imports have varied over time, these purchases nevertheless play a key role in meeting the needs of Canadians and maintaining operational balance (for example, through such synergies as a summer-peaking system in New England and winter-peaking in eastern Canada).

Shared Rules for a Shared System

The physical and market linkages between our two countries are made possible by adherence to a common set of operational and commercial rules.

Foremost within this shared framework is the suite of mandatory electric reliability standards developed by the North American Electric Reliability Corporation ("NERC") for purposes of ensuring reliable operation of the integrated grid. Certified by the U.S. Federal Energy Regulatory Commission as the Electric Reliability Organization for the U.S., NERC has also been recognized as the appropriate body for standards development by applicable authorities in Canada. In 2002, the province of Ontario became the first jurisdiction in North America to make reliability standards mandatory and enforceable. Since then, all other provinces with a footprint in the larger North American bulk power system have crafted legislative, regulatory or other mechanisms to ensure standards are adopted and enforced within their borders.

Market coordination is also essential to ensuring a seamless, uninterrupted flow of electrons across our shared border. CEA members follow a common set of practices and protocols in order to transact with Independent System Operators, Regional Transmission Organizations and

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[2] *See:* http://www.ieso.ca/imoweb/media/md_newsitem.asp?newsID=6323. [Retrieved October 22, 2013].

[3] *National Energy Board, Electricity Exports and Imports, 2010; Energy Information Administration, U.S. States, State Profiles and Energy Estimates, Exports and Imports, 2010.*

other market participants in the U.S.[4] Compliance with these terms ensures greater liquidity in wholesale and bilateral markets, and a greater diversity of supply options for customers throughout North America.

Diversity in the North American Supply Mix

And finally, as the data in Chart 1 below illustrate, Canada and the U.S. have very different generation mixes. These differences primarily reflect availability of resources, as different geographic regions have access to different fuel inputs. System integration and cross-border trade enables market participants to take advantage of the supply diversity between the Canadian and U.S. segments of the larger North American grid.

Chart 1

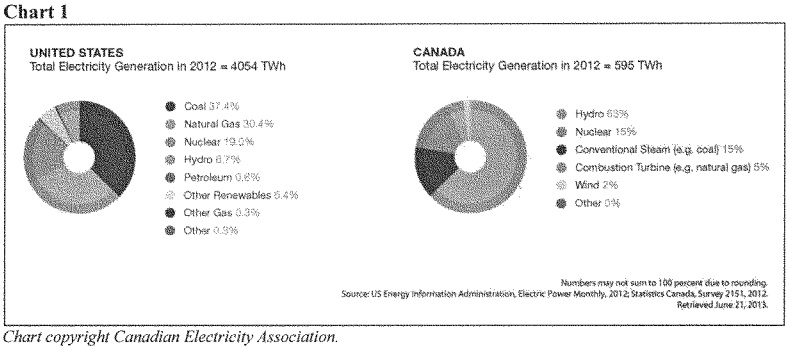

Chart copyright Canadian Electricity Association.

In sum, North Americans benefit from a shared system, serving as the backbone for the dynamic exchange of electrons which are generated and transmitted across vast distances to ensure a reliable, secure and affordable supply of electricity, 24 hours a day, seven days a week.

2. New Cross-Border Interconnections – A Valuable Component in the Portfolio of Necessary Electric Infrastructure Investments

As it has done in the past, ongoing and future expansion of the physical linkages between the Canadian and U.S. segments of the grid will yield significant benefits to consumers.

Facilitating the Transition to a Low-Carbon Economy

For starters, greater integration across the grid will help ensure that North America's clean energy potential is maximized, rather than left stranded. Table 1 below provides a summary of

[4] In fact, the province of Manitoba is located within the footprint of the U.S.-based Midcontinent Independent System Operator.

the multitude of IPL projects currently under various stages of development. All of the IPL proposals listed will support the development of clean, non-emitting energy resources, including resources located in the U.S. Completion of these projects will constitute a key effort in the ongoing transition towards a lower-carbon future, and will mark yet another important phase in the legacy of Canada and the U.S. playing to our integrated strengths to optimize the environmental performance of the international grid.

Table 1 – Current Canada-U.S. IPL Projects

Name	Sponsor	State-Province	Length (miles)	Voltage & Capacity	Purpose	In-service Date	Presidential Permit Status
Champlain Hudson Power Express	Transmission Developers Inc.	New York-Québec (QC)	333	1,000 MW, HVDC (submarine, underground, merchant)	Deliver hydro and wind energy from QC to New York City area	Fall 2017 (expected)	Application filed March 2010; issuance expected winter 2013/14
Great Northern Transmission Line	Minnesota Power (MP)	Minnesota-Manitoba (MB)	TBD	500 kV	Part of MP-MB Hydro PPA; supports building wind in ND	June 2020 (expected)	Application not yet filed
Lake Erie CleanPower Connector	Lake Erie Power Corp.	Pennsylvania-Ontario (ON)	TBD	1,000 MW, HVDC (submarine, merchant)	Deliver ON clean energy, boost reliability, reduce congestion	TBD	Application not yet filed
Montana-Alberta Tie Ltd.	Enbridge	Montana-Alberta	214	230 kV, 300 MW (merchant)	Connect wind farms in MT; bidirectional flow of wind energy	September 2013	Issued November 2008
Northern Pass	Northern Pass Transmission LLC	New Hampshire-Québec (QC)	187	1,200 MW, HVDC line with 345 kV AC spur	Deliver QC hydro into New England	Mid-2017 (expected)	Application filed October 2010; re-filed with new route July 2013
Soule River Hydroelectric Project	Soule Hydro, LLC	Alaska-British Columbia (BC)	10	138 kV, HVAC (submarine)	Support 77 MW hydro project in AK (sales to BC or Pacific NW)	TBD	Application filed March 2013

Source: http://energy.gov/oe/services/electricity-policy-coordination-and-implementation/international-electricity-regulatio-2. [Retrieved: October 22, 2013].

Benefits for Reliability

An increase in the number of cross-border interconnections will also pay dividends in terms of system reliability. Reliability is essentially about two things – adequacy of supply and security of supply. IPLs assist in strengthening both, by offering customers on either side of the border more outlets to maintain sufficient resources for delivery and to withstand sudden disturbances or unanticipated losses in system equipment.

The enduring appeal of IPLs as advantageous options to pursue these benefits – as well as other benefits, specific to the economic needs and public policy interests of the local jurisdictions

involved – is borne out by the number of projects currently under consideration. And, in a broader context, the pursuit of these benefits is just one of the many factors underscoring a much larger need for significant investments in new electricity infrastructure. Other drivers include aging assets, population and demand growth, the proliferation of cyber and physical security threats, advances in technology, system congestion, and the evolving expectations of consumers – who rely more and more on electricity to power their means of livelihood and leisure.

Time to Invest

In Canada, studies have found that upwards of C$350 billion is needed to refurbish, renew and replace electricity infrastructure over the next 20 years.[5] This translates into an average annual investment requirement of C$15 billion – the highest in the country's history.

And this challenge is by no means unique to Canada. In the U.S., the sector is also confronting a daunting task to fund record levels of capital expenditures. Investor-owned utilities are projecting investment needs in the unprecedented range of US$85 billion alone through 2014.[6]

Opening the door to new infrastructure investments will not only augment the North American electricity sector's ability to continue delivering a reliable and affordable power supply, it will also generate significant economic growth and employment opportunities along the way. According to a 2012 study conducted by the Conference Board of Canada, for every C$100 million invested in power system assets, real GDP is boosted by C$85.6 million and approximately 1,200 jobs are created.[7]

There are therefore numerous reasons to seek to ensure that the requirements relating to new cross-border interconnections and trade serve to facilitate such interconnections and trade.

3. Modernizing Regulation Governing Infrastructure Development & Maintaining Robust Environmental Reviews: Recent Reform in Canada

Before offering a few thoughts on H.R. 3301, I wish to briefly highlight some developments and features around the legislative and regulatory regimes governing major infrastructure projects in Canada, which subcommittee members may find to be instructive.

21st Century Regulation for a 21st Century Grid

Similar to discussions in the U.S., there has been a growing recognition for some time on the part of Canadian policymakers of the need to modernize these regimes by tackling certain systemic challenges: a lack of timeliness, predictability, certainty and consistency in review processes;

[5] "Shedding Light on the Economic Impact of Investing in Electricity Infrastructure." The Conference Board of Canada. February 2012. http://www.conferenceboard.ca/e-library/abstract.aspx?did=4673. [Retrieved: October 22, 2013].

[6] "Electric Power Industry Outlook: 2013 Wall Street Briefing." Edison Electric Institute. February 6, 2013. http://www.eei.org/ourissues/finance/Documents/Wall_Street_Briefing_2013.pdf. [Retrieved: October 22, 2013].

[7] The Conference Board of Canada, *supra*.

oversight accountability diffused through multiple departments; duplication of requirements at the national and sub-national level; and an absence of effective enforcement.

The Government of Canada – through its *Responsible Resource Development* plan – has sought to update permitting and review processes for major infrastructure projects, with a focus on the following: (1) establishing clear timelines; (2) reducing duplication and regulatory burdens; (3) strengthening environmental protection; and (4) enhancing consultation with Aboriginal peoples.

This package of reforms has included amendments to the statutes governing the oversight exercised by the National Energy Board of Canada ("NEB"). With respect to electricity, the NEB's authority mirrors that of the DOE, insofar as the NEB reviews applications for the construction and operation of IPLs, and for the exportation of electricity.

The Government of Canada's regulatory modernization efforts have included such steps as consolidation of federal departments' responsibilities over environmental assessments ("EAs") and substitution or equivalency with provincial EAs, provided they fulfill federal requirements[8]; establishment of fixed beginning-to-end timelines for EAs, ranging from 12-24 months; establishment of legally-binding timelines for execution of permitting processes; and enhanced powers for federal authorities in order to conduct reviews in a timely and cost-effective manner.

The Comprehensive Nature of Environmental Reviews in Canada

A few essential points of emphasis and clarification are in order here. To begin, CEA does not view these reforms as having come at the expense of the quality of the rigorous environmental protection and stakeholder consultation requirements which have long been a hallmark of the federal regulatory regime in Canada. An important distinction must be made between abandoning or eliminating vitally-important regulatory obligations (including environmental reviews) and pursuing greater efficiencies and effectiveness in their execution.

The federal environmental review process in Canada is comprehensive and robust – and rightly so. Numerous factors are considered as part of these reviews, including impacts on the physical and meteorological environment; soil, soil productivity and vegetation; wetlands, water quality and quantity; fish, wildlife, and their habitat; species at risk or species of special status and related habitat; heritage resources; traditional land and resource use; and human health, aesthetics and noise.[9] Any EA will consider cumulative environmental effects of the proposed infrastructure project, mitigation measures, the significance of effects even after mitigation measures are implemented, and input received from the public.

In addition, it is important to emphasize that newly-established fixed timelines are for purposes of enabling responsible officials to review environmental studies and assessments which have

[8] This is commonly referred to as the "one project, one review" approach, under which a project would undergo a single environmental review by the agency in the best position to perform such review.

[9] *See:* http://www.neb-one.gc.ca/clf-nsi/rthnb/nws/fqs/nvrnmntlssssmntsfq-eng.html#s5. [Retrieved: October 22, 2013].

already been commissioned by the applicant. They therefore do not involve curtailment or constraints of EAs. Under the modernized regime, there will be continuity in the performance of the same, high-quality, thorough reviews as in the previous regime, but with more flexibility and efficiency built into the process, particularly through such means as strengthened coordination with governments at the sub-national level.

Finally, the streamlining of these processes has been accompanied by more stringent enforcement measures, with responsible agencies now bearing enhanced authority to verify compliance and to issue monetary penalties to punish violations.

In step with their commitment to excellence in environmental compliance and performance, CEA members approach with the utmost seriousness their obligations to engage in effective and transparent consultation with affected stakeholder groups, including Aboriginal communities. With respect to stakeholder engagement, there are many fantastic examples of CEA members' success in meeting the high thresholds of performance which are either prescribed under law or voluntarily pursued through best practices. These include official equity partnerships between CEA members and First Nations for the development and management of large hydropower projects, which bring significant economic benefits to the local communities.

While CEA has been pleased with the Government of Canada's modernization of federal review processes, the reform agenda in Canada is not yet complete – getting the accompanying regulations and policies in place is key. CEA is cautiously optimistic that our federal government is moving in the right direction, but ultimately, the proof will lie in implementation.

As subcommittee members consider H.R. 3301 or other possible solutions for modernizing U.S. regulatory processes governing infrastructure development, CEA would commend the recent reforms undertaken in Canada for your consideration. Furthermore, CEA would underscore that any movement to achieve greater efficiencies in review processes can and must be compatible with support for comprehensive environmental protection requirements.

4. Alignment of Canadian and U.S. Regulatory Processes to Enhance Cross-border Electricity Infrastructure Development and Trade

Turning to the draft bill which is the focus of today's hearing, the release of H.R. 3301 strikes CEA as a timely opportunity to discuss the current state of the processes in place in Canada and the U.S. for permitting IPLs and authorizing electricity exports, and to explore whether there are any mismatches in these processes that stand to benefit from closer alignment to the advantage of all parties involved (government authorities, project sponsors and impacted stakeholders).

As an example of CEA's existing views on these matters, earlier this year CEA released a policy paper – *The Integrated Electric Grid: Maximizing Benefits in an Evolving Energy Landscape* – offering recommendations for enhancing the already strong bilateral relationship around

electricity.[10] In this paper, CEA called for enhancements to the efficiency of administrative procedures governing authorizations for exportation of electricity and permits for IPLs. These recommendations were a response to the enduring presence in these rules – on both sides of the border – of out-dated requirements which should be adjusted to reflect evolutions in electric power markets and the new reliability standards requirements in place at NERC.

And just less than two weeks ago, CEA made a submission to the Canada-United States Regulatory Cooperation Council ("RCC") recommending that the NEB and DOE formally cooperate on modernizing their respective requirements for IPL and electricity export permits (see attached Appendix below). This submission responded to a solicitation issued by the RCC in August 2013 seeking additional public input on how to reinforce and expand efforts at regulatory cooperation between Canada and the U.S.[11] As stated in our comments, CEA strongly believes that institutionalizing NEB and DOE cooperation under the auspices of the RCC will help maximize effectiveness and efficiencies between the agencies' respective approaches.

Modernizing the Permit Process for IPLs

The aforementioned CEA policy paper and comments to the RCC have not gone so far as to call for overhaul of DOE's Presidential Permit process for IPLs. It is CEA's understanding that, on balance, the experience with DOE's Presidential Permit process has usually been satisfactory and has not encountered the kind of challenges more recently faced by other sectors in the energy industry.

Nonetheless, CEA respectfully suggests that there are benefits to be gained from modernizing the process – particularly when one bears in mind the commitments that DOE has made around how this process should function and under what timelines. The public information provided by DOE to Presidential Permit applicants and other stakeholders states that DOE requires approximately 6-18 months to issue a Presidential Permit.[12] However, a quick glance at the recent record in Presidential Permit proceedings reveals a trend of delays and much longer timelines.

For example, since 2000, four applications for construction and operation of new Canada-U.S. IPLs have successfully moved through the Presidential Permit process. The permitting times for these projects ranged from six months (for an IPL only one mile in length and thus exempt from DOE environmental review) to three and three-and-a-half years for two other projects. And as noted in Table 1 above, three applications are currently pending before DOE. Among these, the project that has been in the queue the longest has spent three-and-a-half years under review.

In addition, over the last 10 years, many Presidential Permit proceedings at DOE have featured either physical or operational changes to existing IPLs, or transfers of ownership of existing

[10] *See:* http://www.electricity.ca/media/pdfs/CanadaUS/CEA_US%20Policy%20Paper_EN.pdf. [Retrieved: October 22, 2013].
[11] *See:* http://gazette.gc.ca/rp-pr/p1/2013/2013-08-31/html/sup4-eng.html. [Retrieved: October 22, 2013].
[12] *See:* http://energy.gov/oe/services/electricity-policy-coordination-and-implementation/international-electricity-regulatio-6. [Retrieved: October 22, 2013].

IPLs. Processing times for these applications have also suffered significant inconsistencies. For example, in 2010, a CEA member filed a request to amend its DOE Presidential Permit for purposes of a straightforward transfer of ownership.[13] This took approximately two-and-a-half years to process. What's more, this application entailed a request to reverse a previous transfer of ownership executed by the company, which in the earlier instance took only six months to complete.

CEA respectfully suggests (and has done so in recent years as part of its engagement with DOE staff) that a take-away from the recent record of Presidential Permit proceedings is an inconsistency in the timelines for processing applications – whether the application is for construction and operation, physical or operational change, or transfer of ownership. While CEA is not aware of any specific circumstances in which inconsistencies have jeopardized the viability of a project, such inconsistencies inject uncertainty and risk into the project from a planning perspective, and can result in unnecessary escalation of administrative costs for proponents.

Modernizing the Presidential Permit process would therefore not only present benefits in terms of enabling DOE to better meet its own time commitments for reviewing an application, it would also offer the added benefit of aligning more closely with the recent establishment of fixed deadlines for completion of corresponding reviews by the NEB in Canada.

Modernizing the Authorization Process for Exports

CEA would offer similar observations with respect to DOE authorizations for electricity exports. Again, in certain respects, these authorizations have more of a direct impact for specific CEA members, many of which are holders of these authorizations. The general sense has been that the application and review process for export authorizations has rarely jeopardized the ability of a CEA member to market power. Nevertheless, there are several ways in which the process would be improved through modernized requirements (and would likewise allow DOE to consistently meet its commitments for reviewing applications in 3-6 months).

In particular, DOE export authorizations have yet to be updated to reflect and to avoid duplication of current market or regulatory measures (including mandatory NERC reliability standards, wholesale market rules and state integrated resource planning requirements, which – together or even separately – can address the intent of existing DOE authorization requirements). Indeed, CEA would respectfully raise the question of whether there is anything governed under current DOE export authorizations that is not addressed through a separate market or regulatory mechanism, or a combination thereof.

Signs of Movement towards Reform

To their credit, both the NEB in Canada and DOE in the U.S. have recognized for some time the need for reform and are beginning to take action to update their respective requirements. A few

[13] A 7.5-mile segment of this IPL loops through U.S. territorial waters, thus requiring possession of a Presidential Permit by the applicable CEA member company.

weeks ago, the NEB posted for stakeholder input a set of proposed regulatory amendments to streamline the application and reporting requirements for export permits, as well as to update the application process for IPLs.[14] Similarly, pursuant to President Obama's 2011 Executive Order on "Improving Regulation and Regulatory Review", DOE has identified its applicable procedures as candidate rules for review under its regulatory reform plans, and has previously signalled to stakeholders (including CEA) an interest in streamlining its review processes.[15]

Principles in H.R. 3301

Based on the above discussion, and in step with recent reform efforts in Canada and with its own policy platform, CEA wishes to acknowledge and applaud the specific principles underlying H.R. 3301 which propose the following: establishment of fixed timelines for permitting processes for cross-border energy projects; modernization of procedures to avoid duplication of existing market and regulatory measures; and efficiencies in project reviews, including for routine proceedings such as transfers of ownership.

Moreover, consistent with its members' commitment to robust environmental stewardship, CEA maintains that any effort to modernize permitting processes must at the same time retain a rigorous standard for performance of environmental reviews at some stage of the normal siting and permitting process.

Conclusion

H.R. 3301 offers the opportunity for industry, government and stakeholders on both sides of the border to further engage in a dialogue around how we can cooperatively best address the cross-border piece of the larger energy infrastructure and trade puzzle in North America, and ensure development of a 21st century grid is governed by a 21st century regulatory regime.

CEA supports steps being taken by federal governments in both Canada and the U.S. to enact meaningful reforms, and strongly encourages relevant authorities to sustain efforts to foster a strong regulatory framework – based on appropriate public consultation, protection of consumers and world-class environmental standards – that effectively strikes a balance between providing rigorous oversight and supporting infrastructure investments and open trade.

I would like to thank the subcommittee once again for the opportunity to be here today to engage in this stage of the dialogue and I look forward to continued engagement with you on this important topic. I would be happy to answer any questions that you may have.

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[14] *See:* http://www.neb-one.gc.ca/clf-nsi/rpblctn/ctsndrgltn/rrggnmgpnb/xprtsndmprt/xprtmprtrgltryfrmwrk-eng.html. [Retrieved: October 22, 2013].

[15] *See:* http://www.whitehouse.gov/sites/default/files/other/2011-regulatory-action-plans/departmentofenergyregulatoryreformplanaugust2011.pdf. [Retrieved: October 22, 2013].

Appendix – CEA Comments to Canada-United States Regulatory Cooperation Council

(October 18, 2013)

Canadian Electricity Association | Association canadienne de l'électricité

October 18, 2013

VIA EMAIL: RCC-CCR@pco-bcp.gc.ca; International-OIRA@omb.eop.gov

Re: Canada-United States Regulatory Cooperation Council ("RCC") – Stakeholder Request for Comment, Summer 2013

Dear RCC Secretariat:

The Canadian Electricity Association ("CEA")[1] is pleased to submit the following comments in response to the RCC Secretariat's August 31, 2013 solicitation of additional public input on how to reinforce, institutionalize, and expand efforts at regulatory transparency and cooperation between Canada and the United States.[2]

I. Recommendation for NEB-DOE Cooperation

CEA believes that there is significant value to be gained from the National Energy Board of Canada ("NEB") and the U.S. Department of Energy ("DOE") formally cooperating under the auspices of the RCC on modernizing their respective requirements for international power line ("IPL") and electricity export permits as part of this next round of efforts to expand bilateral regulatory cooperation.

II. CEA's Relevant Interests

CEA members have a direct interest in the efficiency and effectiveness of NEB and DOE permitting processes. In Canada, CEA members are subject to NEB oversight, as specified under the *National Energy Board Act* ("NEB Act") and accompanying regulations.[3] Those members wishing to export electricity to the United States must obtain an NEB electricity export permit or licence, while those members wishing to construct and operate an IPL must obtain an NEB IPL permit or certificate.

With respect to analogous U.S. requirements, many of CEA's electricity marketing members do hold DOE authorizations to export electricity to Canada.[4] With one limited exception, CEA members do not hold Presidential Permits issued by DOE for the U.S. segments of IPLs. However, they are nevertheless impacted by considerations related to the issuance of a Presidential Permit for the U.S. side of any given IPL.

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[1] Founded in 1891, CEA is the authoritative voice of the Canadian electricity industry, promoting electricity as a key social, economic and environmental enabler that is essential to Canada's prosperity. CEA members generate, transmit, distribute and market electric energy to industrial, commercial and residential customers across Canada and into the United States every day. From vertically-integrated electric utilities, to power marketers, to the manufacturers and suppliers of materials, technology and services that keep the industry running smoothly – all are represented by this national industry association.

[2] *See:* http://gazette.gc.ca/rp-pr/p1/2013/2013-08-31/html/sup4-eng.html

[3] NEB oversight of construction and operation of IPLs is governed under Section 58.1, Part III.1 of the NEB Act. NEB oversight of electricity exports is governed under Section 119.02, Part VI, Division II of the NEB Act.

[4] DOE oversight of construction and operation of IPLs is governed under Executive Order 10485, as amended by Executive Order 12038. DOE oversight of electricity exports is governed under Section 202(e) of the *Federal Power Act*.

III. Purpose of CEA's Recommendation

The basis for CEA's recommendation that the NEB and DOE seek to cooperate more formally and directly within the context of the RCC's ongoing efforts is the following:

1. Canada and the United States share an integrated power grid, with cross-border linkages and trade set to continue expanding.

   Electricity is essential to North American prosperity. It serves as the backbone of the more expansive North American energy system and as an indispensable enabler or input for growth in every other economic sector. North Americans benefit from a system which can generate and transmit electrons across vast distances to ensure a reliable, secure and competitively-priced supply of electricity, 24 hours a day, seven days a week.

   The Canadian and U.S. electric transmission systems are physically interconnected at over 35 points. These physical linkages offer numerous advantages to both countries, including a higher level of reliable service through enhanced system stability and expanded access to non-emitting, competitively-priced resources. Such access is made possible through the open, inclusive electricity trading regime whose growth has been enabled by the strong level of grid integration. In 2012, the value of electricity traded across the border exceeded C$2.1 billion.[5]

   As it has done in the past, ongoing and future expansion of the physical linkages between the Canadian and U.S. segments of the grid will yield significant benefits to consumers. At present, there are no less than half a dozen IPL projects under various stages of development all along our shared border.[6] And as recent statistics reveal, bilateral trade in electricity continues to trend upwards.[7]

   Accordingly, in view of the ongoing expansion of Canada-U.S. electric integration, CEA believes that it is in the interests of both countries to ensure their respective regulatory approaches are aligned such that this expansion can be overseen and facilitated in the most effective and efficient way possible.[8]

2. Mismatches and inconsistencies persist between the respective permitting processes in place at the NEB and DOE for IPLs and electricity exports.

   CEA believes that greater synergies can be achieved in the approaches utilized on either

[5] NEB, Electricity Exports and Imports, December 2012.

[6] *See:* http://energy.gov/oe/services/electricity-policy-coordination-and-implementation/international-electricity-regulatio-2; http://www.enbridge.com/DeliveringEnergy/Power-Transmission/Montana-Alberta-Tie-Line.aspx; http://www.hydro.mb.ca/projects/mb_mn_transmission/description.shtml; http://www.cleanpowerconnector.com/.

[7] NEB, *supra.*

[8] For more information on Canada-U.S. electric integration, please consult the following policy paper released by CEA in April 2013: http://www.electricity.ca/media/pdfs/CanadaUS/CEA_US%20Policy%20Paper_EN.pdf.

side of the border. Such synergies will assist in maximizing efficiencies and providing maximum certainty to project sponsors and permit applicants.

(a) For example, there is a disparity in the length of time involved in the issuance of permits for the Canadian and U.S. segments of IPLs. Recent experience has signalled that the NEB is generally able to review and issue a determination on an IPL permit application within a one-year timeframe. DOE has publicly stated that it requires approximately 6-18 months to issue a Presidential Permit.[9] However, the recent record in Presidential Permit proceedings reveals a trend of much longer timelines. Among the applications currently pending before DOE, the project that has been in the queue the longest has spent three-and-a-half years under review.

In fairness, the NEB IPL permit review process involves analysis of an environmental assessment that has already been conducted, while environmental reviews at DOE are only triggered upon submittal of an IPL project application. Nevertheless, CEA maintains that there is still ample room for greater alignment between NEB and DOE timelines for IPL project review – particularly when one bears in mind the commitments that DOE has made around how its process should function and under what timeframes.

CEA is not aware of any specific circumstances in which the mismatches in the length of time involved in obtaining NEB and DOE permits for the same IPL have jeopardized the viability of a project. However, such inconsistencies inject uncertainty and risk into the project from a planning perspective, and can result in unnecessary escalation of administrative costs for proponents.

(b) There are several other examples of mismatches in the respective processes and their requirements. For instance, with respect to the length of time for which an export permit remains in effect, the NEB typically issues permits which are valid for 10-year terms or longer, whereas DOE export authorizations are often only valid for five years.

In addition, under recently-proposed amendments to its regulations, the NEB plans to eliminate its long-standing requirement for an export permit applicant to specify those IPLs over which it proposes to export electricity.[10] This requirement – also a mainstay of DOE's permitting framework – will nevertheless remain in place south of the border.

Finally, potential endures for mismatches in coordinating the review of border-crossing points for a given IPL. It is CEA's understanding that under the existing NEB and DOE permitting regimes, there is nothing in place to support such coordination in the event either agency is considering a separate route and corresponding border-crossing point as an alternative to that which is proposed by the applicant and agreed to jointly by the other IPL project sponsor.

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[9] *See:* http://energy.gov/oe/services/electricity-policy-coordination-and-implementation/international-electricity-regulatio-6.

[10] *See:* http://www.neb-one.gc.ca/clf-nsi/rpblctn/ctsndrgltn/rrggnmgpnb/lctrcty/prpsdchnglctrctyrgltn-eng.pdf, proposed Part III, Section 9.(*i*), page 10.

CEA respectfully suggests that these and other inconsistencies throughout the NEB and DOE's permitting regimes stand to benefit from greater alignment and synergies.

3. Both the NEB and DOE permitting processes for IPLs and electricity exports contain out-of-date requirements that should be modernized to reflect evolutions in the oversight of electric power system operations.

   A key example in this regard is the enduring requirement at both the NEB and DOE for an export permit applicant to demonstrate that the proposed exportation will not adversely impact the reliabile operation of the IPL or electric transmission system. These requirements have not been updated since the establishment of a mandatory electric reliability standards regime across North America. Standards developed by the North American Electric Reliability Corporation govern operational parameters for IPLs and interconnected power systems. Exportation of electricity can only occur if the exportation remains within the confines of these parameters. More importantly, operational determinations are beyond the responsibility or control of the exporter, and rest with the IPL owner and/or operator, and power system operator.

   In this respect, there are tangible ways in which both the NEB and DOE's regulatory approaches can be more aligned through a joint effort to modernize their requirements.

4. Both the NEB and DOE have already identified a need to update their permitting processes and are at various stages of actively proposing modifications.

   To their credit, both the NEB and DOE have recognized for some time the need for reform and are beginning to take action to update their respective requirements.

   For many years, as part of its ongoing informal dialogue with stakeholders (including CEA and its members), DOE has signalled an interest in streamlining its review processes. More recently, pursuant to President Obama's 2011 Executive Order on "Improving Regulation and Regulatory Review," DOE has identified its applicable procedures governing IPL and electricity export permits as candidate rules for review under its reform plans.[11]

   Likewise, informal CEA consultation with the NEB over the years has signalled strong interest on the part of the NEB to modernize relevant permitting requirements. And in fact, the NEB has recently taken advantage of the need to update its regulations to conform with the Government of Canada's *Jobs, Growth and Long-Term Prosperity Act* by proposing additional modifications to streamline its processes.[12]

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[11] *See:* http://www.whitehouse.gov/sites/default/files/other/2011-regulatory-action-plans/departmentofenergyregulatoryreformplanaugust2011.pdf.
[12] *See:* http://www.neb-one.gc.ca/clf-nsi/rpblctn/ctsndrgltn/rrggnmgpnb/xprtsndmprt/xprtmprtrgltryfrmwrk-eng.html.

CEA is encouraged by and strongly supportive of the above efforts. Nevertheless, **CEA believes that maximum benefit will be derived from these activities if they are performed in conjunction and alignment with each other, rather than in isolation.**

Institutionalizing these initiatives under the umbrella of the RCC will help ensure that the NEB and DOE's reviews and reforms are coordinated, and will help maximize effectiveness and efficiencies between the agencies' approaches. Absent any reform, permit applicants will continue to face challenges as they seek to undertake projects which will further expand the already significant level of integration between the Canadian and U.S. segments of the larger North American grid.

IV. Conclusion

CEA appreciates this opportunity to offer recommendations as the RCC Secretariat proceeds with its next round of efforts to strengthen, mature and expand regulatory cooperation between Canada and the United States. CEA trusts that the information set forth herein provides an adequate basis for assessing the merits of and proceeding with NEB-DOE cooperation under the auspices of the RCC.

CEA looks forward to engaging the NEB, DOE and RCC further on this important initiative. Please do not hesitate to contact us for any additional information or if we can be of any further assistance.

Regards,

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Mr. SCALISE. All right. Thank you.
Ms. Hutzler.

STATEMENT OF MARY J. HUTZLER

Ms. HUTZLER. Mr. Chairman, ranking member, and members of the subcommittee, thank you for the opportunity to testify today.

Forty years ago, the United States faced the 1973 Arab oil embargo setting off a series of policy initiatives in Washington designed to reduce our dependence on foreign oil. Despite them, domestic production of oil had declined and oil imports had increased until recently. Thanks to American innovation, new drilling technologies have allowed us to tap our vast shale resources and make the United States the largest liquid fuels and natural gas producer in the world. And with Canada's vast proven oil reserves, the prospect of North American energy independence is no longer political rhetoric but a promising reality.

The Institute for Energy Research has monitored closely the energy boom that is occurring primarily on private and State lands. Today, we welcome the committee's review of new ideas to strengthen our Nation's energy infrastructure and facilitate access to North America's vast stable supply of oil and natural gas.

According to the government's own numbers, North America has enough resources to provide reliable and affordable energy for centuries to come, which IER highlighted in a recent inventory of North America's energy resources. To fully benefit from this energy renaissance, however, we need the infrastructure to get the energy where it is needed and the energy security that this infrastructure would provide.

Pipelines have been used for 3/4 of a century providing the safest, most-efficient, and least-cost transport of oil and natural gas, but due to existing pipelines reaching near full capacity, oil transport by rail has increased dramatically. Last year, oil carried on trains from Canada to the United States increased 46 percent. EIA estimates that 1.37 million barrels of oil and petroleum products per day were moved by train during the first 6 months of 2013, up 40 percent in just one year.

Total Canadian oil imports to the United States have also been rising steadily. Between 1993 and 2012, imports of oil from Canada increased by 150 percent. Most of the oil comes be a pipeline. The failure to construct the Keystone XL pipeline has precipitated greater use of trains for oil transport both from Canada and within the United States from the Bakken field to North Dakota.

The United States imported almost 3 trillion cubic feet of natural gas from Canada in 2012, 12 percent of our consumption that year. The United States gets 94 percent of its natural gas imports from Canada. The rest comes from Mexico and from overseas as liquefied natural gas. Canadian natural gas imports to the Northeast and Midwest, areas that also benefit from increased domestic production of the Marcellus Shale, are slightly declining, while Canadian natural gas imports into the Northwest are increasing. Four U.S. States, Minnesota, Montana, Idaho, and North Dakota, account for 75 percent of all the natural gas brought into the United States via pipeline. The border States serve as critical links for

gas-dependent States like California where over 55 percent of electric generation comes from natural gas.

On the East Coast, Vermont, the first State to ban hydraulic fracturing, is entirely dependent on natural gas from Canada. On our southern border, the United States is a net exporter of natural gas to Mexico where exports have been on an upward trend since 2000 and have more than doubled since 2007. Mexico is also our third-largest supplier of oil and petroleum products supplying almost 400 million barrels in 2012, though this is down from its peak in 2006.

By maintaining a well-working energy infrastructure between the United States and our closest allies in North America, we can reduce our reliance on overseas oil. The other oil imports are now just 35 percent of oil consumption, but because Canada and Mexico are supplying over 60 percent of our oil imports, our net energy dependence on North American oil is just 14 percent. This number will drop due to increased production here and in Canada but we must ensure that North American energy commerce is free from impediments and permitting delays.

More pipelines will mean greater energy security, safer transport, and the ability to move resources to where they are needed most. The recent politicization of pipelines in the U.S. will not accomplish any goal of those who oppose them. Rather, oil and natural gas producers will simply use more costly modes of transport that pose greater risks to the environment. They will export North American energy investments and jobs to countries with far fewer commitments to environmental protection. Affordable energy is essential to economic growth. Efficient and low-cost transport of energy provides the arteries of commerce that nourish an economic recovery.

Thank you and I look forward to your questions.

[The prepared statement of Ms. Hutzler follows:]

Hearing on North America Energy Infrastructure Act
October 29, 2013
Testimony of Mary J. Hutzler
The Institute for Energy Research

Importance of North American Energy Trade

- North America is an energy powerhouse. According to IER's 2011 North American Energy Inventory, North America has:
  - Enough oil to fuel every passenger car in the U.S. for 430 years.
  - Enough natural gas to provide the U.S. with electricity for 575 years.
  - Enough coal to provide electricity for about 500 years.
- The U.S. annually imports about 1 billion barrels of oil from Canada and almost 400 million barrels of oil from Mexico, the nation's #1 and #3 suppliers of crude and petroleum product imports.
- Net oil imports are now just 35 percent of oil consumption, the same as they were in 1973, when the Arab oil embargo took place.
- Since Canada and Mexico are supplying over 60 percent of our net oil imports, in reality our net energy dependence on non-North American oil is just 14 percent.

U.S. Oil and Gas Pipeline System

- The energy pipeline transportation network of the United States is vast, consisting of over 2.5 million miles of pipelines, which could circle the earth about 100 times.
- According to DOT data, pipelines result in fewer spillage incidents and personal injuries than truck and/or rail. In fact, one is more likely to get struck by lightning than to be killed in a pipeline accident.
- Due to current pipelines reaching full capacity, oil transport by rail has increased dramatically despite it being more greenhouse gas intensive than pipelines. Last year, oil carried on trains from Canada to the U.S. increased by 46 percent from 2011 levels.
- The United States currently imports 3 trillion cubic feet of natural gas from Canada annually, about 12 percent of our current natural gas consumption. These imports help to meet demand in many of the northern U.S. States that use it to heat homes and to generate electricity.

Energy Independence Nears

- Due to hydraulic fracturing and the shale oil and gas revolution, the United States is already the world's largest natural gas producer and the world's largest liquid fuels producer.
- The U.S. will become the world's largest oil producer by 2017, according to the IEA.
- The IEA also expects North America will become a net oil exporter by 2030 and the U.S. almost energy independent by 2035, when OPEC will be exporting 90 percent of its oil to Asia.

BEFORE THE SUBCOMMITTEE ON ENERGY AND POWER

COMMITTEE ON ENERGY AND COMMERCE

HEARING ON NORTH AMERICA ENERGY INFRASTRUCTURE ACT

OCTOBER 29, 2013

TESTIMONY OF MARY J. HUTZLER

THE INSTITUTE FOR ENERGY RESEARCH

The Institute for Energy Research (IER) is a non-profit organization that conducts intensive research and analysis on the functions, operations, and government regulation of global energy markets. IER articulates free market positions that respect private property rights and promote efficient outcomes for energy consumers and producers. IER staff and scholars educate policymakers and the general public on the economic and environmental benefits of free market energy. The organization was founded in 1989 as a public foundation under Section 501(c)(3) of the Internal Revenue Code. Funding for the institute comes from tax-deductible contributions of individuals, foundations, and corporations.

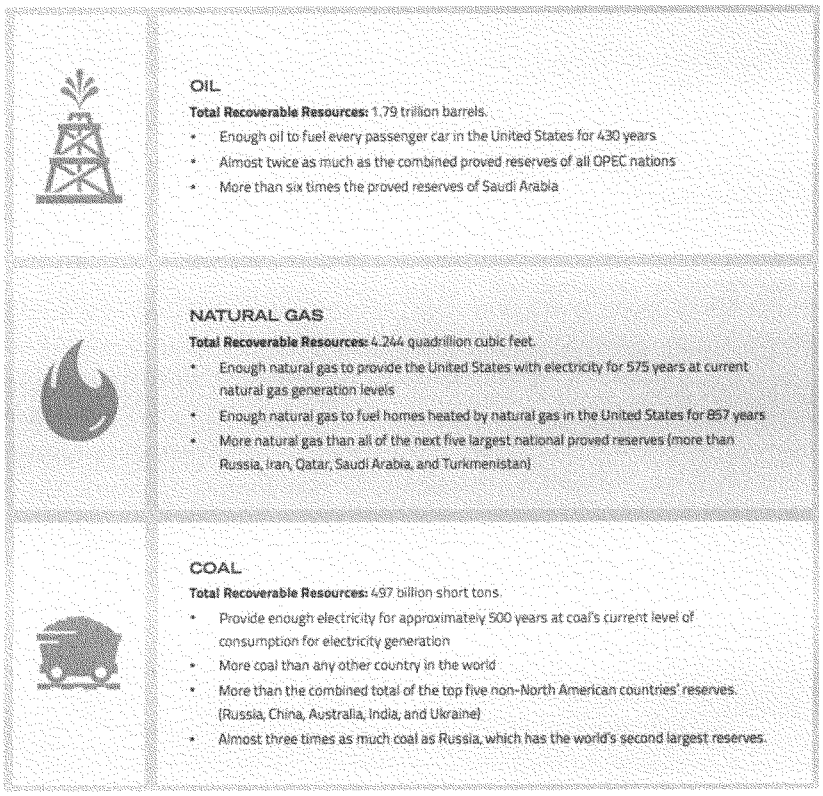
Importance of North American Energy Trade

Thank you for the opportunity to testify today regarding H.R. 3301, "North American Energy Infrastructure Act." *Energy* is defined as "the capacity to do work." *Infrastructure* is defined as "the basic physical and organizational structures and facilities (e.g., buildings, roads, and power supplies) needed for the operation of a society or enterprise." If the United States wants to have the structures and facilities that will enable us to operate our society and our enterprises so that they have the capacity to do the work necessary to remain a great nation, it is essential that we seek to reduce impediments to expanding energy infrastructure and commerce.

The Committee's review of legislation which seeks to do just that is welcome at a time when trans-border energy commerce is increasing throughout North America and our newfound energy bounty means that we can become more dependent upon ourselves and less dependent upon overseas supplies that have been less secure than many Americans would have liked in the recent past. It is fitting that the

Energy & Commerce Committee would seek to reestablish Congress' Article 1, Section 8 Constitutional role to "regulate Commerce with the foreign nations."

North America is a powerhouse of energy, as the Institute for Energy Research demonstrated in our 2011 North American Energy Inventory.[i] In that groundbreaking analysis, using the government's own estimates, we were able to show that contrary to the impression left after decades of discussions of energy shortages, North America is endowed with enormous energy supplies. The recent shale oil and gas revolution is but a small part of the potential future supplies of energy at our disposal.



Source: Institute for Energy Research, http://www.instituteforenergyresearch.org/wp-content/uploads/2013/01/Energy-Inventory.pdf

The vast energy riches of North America mean that our economic future can be bright, and we can choose to chart our own course to a greater degree than we have been led to believe during the past four decades of the myth of energy scarcity. However, energy infrastructure is key to enabling and enhancing our energy and economic prosperity, and anything Congress can do to reduce the barriers to energy infrastructure within North America would be most welcome. Already, our energy commerce with our neighbors is substantial, and it is destined to grow as demand for energy increases here and around the world.

The United States imports oil and natural gas from our northern neighbor, Canada, and southern neighbor, Mexico. These fuels are transported primarily by pipeline—the least expensive, most efficient, and safest transport means to move the fuels. As oil supplies have exceeded oil pipeline capacity limits, rail has increasingly been used to transport oil and petroleum products both within the United States and between the United States and Canada. The United States also exports oil and natural gas to Canada and Mexico based on availability and location of supplies and directional flows of the pipeline system.

Canada is our largest foreign supplier of oil and Mexico is our third largest foreign supplier. The United States annually imports about 1 billion barrels of oil from Canada and almost 400 million barrels of oil from Mexico. Without these imports, Americans would need to import more oil from overseas at a greater cost to the U.S. economy, increasing our dependence on overseas supplies to a greater extent than necessary. While Presidents have sought "energy independence" as a goal from President Nixon on through President George W. Bush, that elusive goal may finally be within reach according to many forecasters. The energy revolution that is going on in North America is historic, and since the resource base is so enormous, we are not limited by a shortage of energy.

There are many reasons why energy trade with our northern and southern neighbors is important. First, it is important to have diversity of supply and the free flow of energy resources in a market that can respond without artificial impediments. Having diverse sources of supply is particularly important today for natural gas because the United States is increasingly relying on it. The United States is generating more electricity from natural gas due to its current low price and to onerous regulations on coal-fired power plants promulgated by the Environmental Protection Agency (EPA). Due to EPA's current and proposed regulations, existing coal-fired power plants will be prematurely retired and no new coal-fired plants will be built, meaning that even more natural gas-fired power plants will need to be constructed in the future.

Even though these regulations are currently not fully implemented, they are having the effect of stopping investment in new coal plants and the mines throughout the United States that service them. Inasmuch as the United States has the world's largest proven reserves of coal, policies seeking to ban the use of coal force the use of massive amounts of other energy sources. That role has increasingly fallen to natural gas, because the baseload dispatchable power currently produced by coal needs to be replaced by another dispatchable source, such as natural gas.

With new uses for American natural gas coming into vogue as a transportation fuel, for increased petrochemical production and for export as liquefied natural gas, the United States needs to ensure that all avenues of supply are open and available to the market. The United States currently gets 3 trillion cubic feet of natural gas from Canada, about 12 percent of our current annual natural gas consumption. We need to ensure that we have a system that allows access to these resources to ensure a flexible, reliable, and stable market place.

The U.S. Oil and Gas Pipeline System

The energy pipeline transportation network of the United States is vast. It consists of over 2.5 million miles of pipelines, which could circle the earth about 100 times. These pipelines are operated by approximately 3,000 companies, and are regulated by the U.S. Department of Transportation.[ii]

Pipelines are not new. They have been used to transport natural gas, oil, and petroleum products for three quarters of a century. The first large-diameter, long-distance pipelines were constructed during World War II, and they proliferated across the country over the following two decades. There are over 2 million miles of natural gas pipelines in the United States and over 180,000 miles of oil pipelines.[iii]

Oil pipelines consist of crude oil pipelines and refined petroleum product pipelines that carry gasoline, jet fuel, home heating oil, diesel fuel and other petroleum products. Crude oil pipelines consist of gathering lines and trunk lines. Gathering lines are small pipelines generally from 2 to 8 inches in diameter that gather the oil from the wells and connect to larger trunk lines that are generally 8 to 24 inches in diameter. There are between 30,000 and 40,000 miles of small gathering lines located in Texas, Oklahoma, Louisiana, Wyoming, and other oil producing states. The crude oil trunk lines or transmission pipelines to which the gathering lines are connected carry crude oil from producing areas to refineries. The Trans Alaskan Pipeline System, which is 48 inches in diameter, is an example of such a pipeline. There are about 55,000 miles of transmission pipelines in the United States.

Refined product pipelines deliver petroleum products to large fuel terminals with storage tanks, from which tanker trucks make local deliveries to gas stations. These refined petroleum pipelines vary in size from relatively small at 8 to 12 inches in diameter to 42 inches in diameter and are found in almost every U.S. state. There are about 95,000 miles of refined product pipelines.

The natural gas pipeline system is organized somewhat differently because unlike oil, natural gas is delivered directly to homes through pipelines. There are about 20,000 miles of natural gas gathering lines that move natural gas to large cross-country transmission pipelines. These large distribution lines, of which there are about 305,000 miles, move the natural gas close to cities where much smaller lines carry it under streets to homes and businesses in almost every city and town in the United States, accounting for the vast majority of the pipeline mileage--over 1.8 million miles.

The U.S. pipeline network is regulated by the U.S. Department of Transportation (DOT), who monitors safety, reliability, and environmental pipeline operation. Data on pipeline safety are available from DOT, who requires pipeline operators to report any incident that crosses a certain safety threshold.[iv] According to safety and accident statistics provided by the U.S. Department of Transportation, pipelines result in fewer spillage incidents and personal injuries than truck and/or rail. In fact, one is more likely to get struck by lightning than to be killed in a pipeline accident.[v]

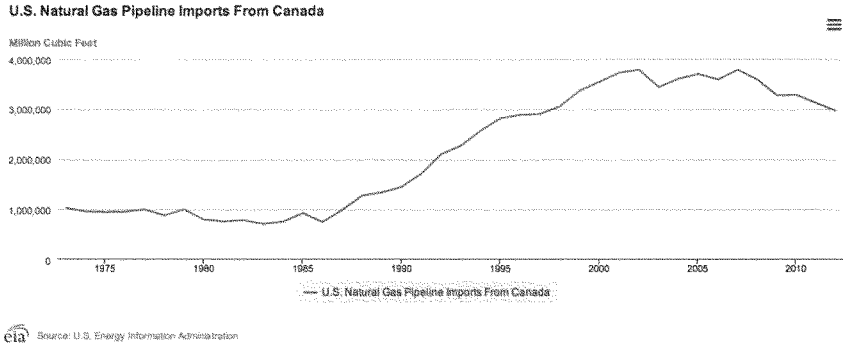
Further, the Manhattan Institute indicates that oil spills are a greater risk with trains than pipelines. A U.S. railway is about 34 times more likely to spill hazardous materials than a pipeline transporting the same volume an identical distance. That is not to say that rail is dangerous. The American Association of Railroads touts a 99.997 percent hazmat safety record.[vi] According to the American Association of Railroads, railroads have an accident rate two to three times higher than pipelines, but involve smaller amounts in each incident, since trains carry smaller amounts than pipelines.

But, due to pipelines reaching full capacity, oil transport by rail has increased dramatically despite it being more greenhouse gas intensive than pipelines. For example, oil carried on trains from Canada to the United States has increased by 46 percent, despite pipelines emitting 8 percent less greenhouse gases than trains, according to the State Department.[vii]

Natural Gas Imports from Canada

The United States imported almost 3 trillion cubic feet of natural gas from Canada in 2012, about 12 percent of our consumption that year. Between the 30-year period from 1983 through 2012, U.S. imports of natural gas from Canada increased by 316 percent. They have declined from their peak in 2002 when they reached 3.8 trillion cubic feet due to the shale gas revolution in the United States and hydraulic fracturing and horizontal drilling technologies, which enable that gas to be produced

economically. The United States gets 94 percent of its natural gas imports from Canada by pipeline; the other 6 percent come by pipeline from Mexico or as liquefied natural gas (LNG) from overseas.



Source: Energy Information Administration, http://www.eia.gov/dnav/ng/hist/n9102cn2a.htm

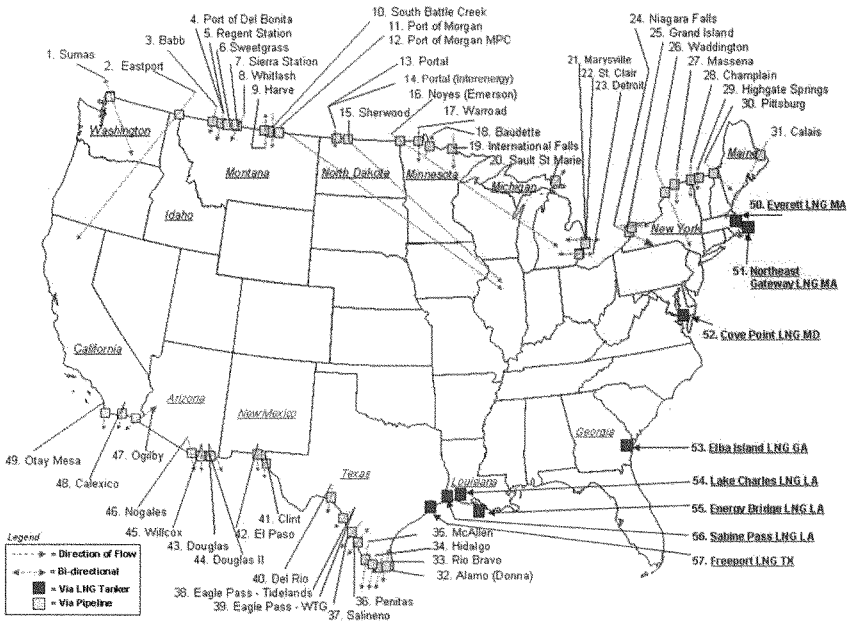
While total U.S. natural gas imports from Canada have been decreasing every year since 2007, not all receiving regions in the United States have followed that decreasing trend. Canadian natural gas imports into the Northeast and Midwest have declined, but they have increased into the Northwest.

The Northeast receives natural gas from Canada, domestic gas from the Marcellus shale, gas from the Gulf of Mexico, and liquefied natural gas (LNG) from the Everett terminal in Massachusetts. Canadian natural gas imports into the Northeast have declined for two reasons. First, natural gas imports through the Maritimes & Northeast Pipeline from the Canaport LNG terminal and from the Sable Offshore Energy production in Canada declined from around 0.5 billion cubic feet per day at its peak to about 0.15 billion cubic feet per day. Second, natural gas production from the Marcellus Shale formation displaced Canadian imports into the northeastern United States. Four interstate natural gas pipeline projects in the Northeast began commercial service in 2011, adding nearly 1.5 billion cubic feet per day of deliverable capacity.

Canadian natural gas imports into the northwestern part of the United States have increased, mainly because natural gas prices at the AECO-C Hub--the benchmark price of natural gas produced in Alberta, Canada--are generally the lowest-cost supplies for the western United States. Pipeline systems for imports in this region are mostly operating at full capacity. Some of the Canadian natural gas imported into the northwestern states is used by the western states and some is delivered to the Midwest through pipelines such as Northern Border and Alliance.

Every U.S. state that shares a land border with Canada has at least one gas pipeline crossing. The states serving as a point of entry for natural gas imported from Canada are: Idaho, Maine, Michigan, Minnesota, Montana, North Dakota, New Hampshire, New York, Washington, and Vermont. The 31 points of entry between Canada and the United States for natural gas are indicated on the map below and detailed in the table below.

U.S. Natural Gas Import/Export Locations, as of 2008



Source: Energy Information Administration, Office of Oil and Gas, Natural Gas Division, Imports/Export Points Database, http://www.eia.gov/pub/oil_gas/natural_gas/analysis_publications/ngpipeline/impex_map.html .

Locations of U. S. Natural Gas Import & Export Points, 2009

Map Key	Location Name (U.S)	Foreign Location Name	Operation (Import/ Export/Both)	State To/ From	Country From/To	U.S. Pipeline	Foreign Pipeline	Capacity (MMcf/d)	Pipeline Diameter (Inches)	Year Service Began
1	Sumas	Huntingdon	Both (but primarily imports)	WA	British Columbia, Canada	Northwest Pipeline (Ferndale & Sumas International use these facilities)	Duke Energy Gas Transmission Canada	1,676 Imp 51 Exp	36, 30,26, & 20	~1962
2	Eastport	Kingsgate	Import	ID	British Columbia, Canada	Gas Transmission - Northwest	Foothills Pipeline/Alberta Natural Gas	2,967	42 & 36	1961
3	Babb	Cardston	Both (but primarily imports)	MT	Alberta, Canada	EnCana Pipelines Ltd	Canadian-Montana Pipeline Ltd	60	10	1989
4	Port of del Bonita	Del Bonita	Import	MT	Alberta, Canada	Omimex Resources Inc	Canadian-Montana Pipeline Ltd	2	4	~1978
5	Regent Station	Coutts	Import	MT	Alberta, Canada	Connector Pipeline Co	Regent Resources Ltd	20	4	2003
6	Sweetgrass	Coutts	Import	MT	Alberta, Canada	EnCana Pipelines Ltd	Canadian-Montana Pipeline Ltd	15	10	~1976
7	Sierra Station	Coutts	Import	MT	Alberta, Canada	Sierra Production Co	Sierra Production Co	24	6	2003
8	Whitlash	Aden	Import	MT	Alberta, Canada	EnCana Pipelines Ltd	Canadian-Montana Pipeline Ltd	26	6 & 8	1980
9	Harve	Willowcreek	Both (but primarily exports)	MT	Saskatchewan, Canada	Havre Pipeline Co	Many Islands Pipeline Ltd	10	8	1993
10	South Battle Creek	Loomis	Export	MT	Saskatchewan, Canada	Omimex Resources Inc	Many Islands Pipeline Ltd	15	6	2001
11	Port of Morgan	Monchy	Import	MT	Saskatchewan, Canada	Northern Border Pipeline	Foothills Pipelines Ltd	2,373	42	1986
12	Port of Morgan MPC	Monchy	Import	MT	Saskatchewan, Canada	EnCana Pipelines Ltd	Foothills Pipelines Ltd	10	4	NA
13	Portal	North Portal	Import	ND	Saskatchewan, Canada	Portal Municipal Gas/Williston Basin PL Co	WBI Canadian Pipeline Ltd	49	16	1994
14	Portal (Interenergy)	North Portal	Import	ND	Saskatchewan, Canada	Interenergy Sheffield Gas Co via Willliston	Interenergy Sheffield Processing Co	3	8	1998
15	Sherwood	Northgate	Import	ND	Saskatchewan, Canada	Alliance Pipeline Co	Alliance Pipeline Canada	1,875	36	2000
16	Noyes	Emerson	Both (but primarily imports)	MN	Manitoba, Canada	Great Lakes and Viking Transmission Co	TransCanada Pipeline Ltd	2,928	36 (2) & 24	1967
17	Warroad	Spraque	Import	MN	Manitoba, Canada	Centra-Minnesota Pipeline Co	Centra Transmission, Inc.	63	12	~1975
18	Baudette	Rainy River	Export	MN	Ontario, Canada	Centra-Minnesota Pipeline Co	TransCanada Pipeline Ltd	63	12	~1975
19	International Falls	Fort Frances	Import	MN	Ontario, Canada	Centra-Minnesota Pipeline Co	Centra Transmission, Inc.	63	12	~1975
20	Sault Ste. Marie	Sault Ste. Marie	Export	MI	Ontario, Canada	Great Lakes Gas Trans Co	TransCanada Pipeline Ltd	130	12 & 10	1967
21	Marysville	Sarnia	Import	MI	Ontario, Canada	Bluewater Pipeline	Union Gas Ltd	500	20 & 12	1996
22	St Clair River	Sarnia	Both (but primarily exports)	MI	Ontario, Canada	Vector Pipeline/Great Lakes Trans	Union Gas Ltd	3,410	36 (2) & 24	1994
23	Detroit	Windsor	Both (but primarily exports)	MI	Ontario, Canada	Panhandle Eastern/Great Lakes/ANR/MichCon	St Clair Pipeline Ltd	100	26 & 22	1988
24	Niagara Falls	Niagara Falls	Both (but primarily imports)	NY	Ontario, Canada	Tennessee Gas Pipeline Co	TransCanada Pipeline Ltd	1,297	30 & 20	~1976
25	Grand Island	Chippawa	Import	NY	Ontario, Canada	Empire Pipeline Co	TransCanada Pipeline Ltd	655	24	1994
26	Waddington	Iroquois	Import	NY	Ontario, Canada	Iroquois Pipeline Co	TransCanada Pipeline Ltd	1,150	30	1991

27	Massena	Cornwall	Import	NY	Ontario, Canada	St Lawrence Gas Co	Niagara Gas Transmission Ltd	62	12	1962
28	Champlain	Napierville	Import	NY	Quebec, Canada	North Country Pipeline	TransCanada Pipeline Ltd	56	10	1993
29	Highgate Springs	Phillipsburg	Import	VT	Quebec, Canada	Vermont Gas System	TransCanada Pipeline Ltd	62	12	1965
30	Pittsburg	East Hereford	Both (but primarily imports)	NH	Quebec, Canada	Portland Gas Trans Pipeline Co	TransQuebec & Maritimes	216	24	1999
31	Calais	St Stephen	Import	ME	New Brunswick, Canada	Maritimes & Northeast Pipeline Co	Maritimes & Northeast Pipeline Canada	865	24	1999
32	Alamo	Reynosa	Both (but primarily exports)	TX	Tamaulipas, Mexico	Tennessee Gas Pipeline Co	Pemex Pipeline	215	24	1999
33	Rio Bravo	Hidalgo	Export	TX	Tamaulipas, Mexico	Tennessee Gas Pipeline	Gasoducto del Rio Pipeline Co	315	30	2003
34	Hidalgo	Reynosa	Both (but primarily exports)	TX	Tamaulipas, Mexico	Texas Eastern Transmission Co	Pemex Pipeline	350	30	1989
35	Mcallen	Reynosa	Both (but primarily exports)	TX	Tamaulipas, Mexico	Coral Energy Pipeline	Pemex Pipeline	350	24	2000
36	Penitas	Penitas	Export	TX	Tamaulipas, Mexico	West Texas Gas Co	Pemex Pipeline	400	24	1992
37	Salineno	Ciudad Camargo	Export	TX	Tamaulipas, Mexico	Kinder-Morgan Border Pipeline Co	Pemex Pipeline	375	30	2003
38	Eagle Pass-Tidelands	Piedras Negras	Export	TX	Coahuila de Zaragoza, Mexico	Tidelands Oil & Gas	Pemex Pipeline	15	12	2003
39	Eagle Pass-WTG	Piedras Negras	Export	TX	Coahuila de Zaragoza, Mexico	West Texas Gas Co	Pemex Pipeline	38	12	1980
40	Del Rio	Acuna	Export	TX	Coahuila de Zaragoza, Mexico	West Texas Gas Co	Pemex Pipeline	25	8	2004
41	Clint	Ciudad Juarez	Export	TX	Chihuahua, Mexico	Samalayuca Pipeline (El Paso Energy)	Pemex Pipeline	312	24	1997
42	El Paso	Del Norte	Export	TX	Chihuahua, Mexico	OkTex Pipeline Co	Pemex Pipeline	90	12	~1972
43	Douglas II	Agua Prieta	Export	AZ	Sonara, Mexico	El Paso Natural Gas Co	Pemex Pipeline	78	16	1999
44	Douglas	Agua Prieta	Export	AZ	Sonara, Mexico	El Paso Natural Gas Co	Pemex Pipeline	45	10	1992
45	Willcox Lateral	Cananea	Export	AZ	Sonara, Mexico	El Paso Natural Gas Co	Pemex Pipeline	230	16 (2)	2001
46	Nogales	Ductos de Nogales	Export	AZ	Sonara, Mexico	El Paso Natural Gas Co	Pemex Pipeline	8	16	2001
47	Ogilby	Sin Nombre Bistrain	Both (but primarily imports)	CA	Baja California, Mexico	North Baja Pipeline Co	Gasoducto Bajanorte Ltd	614	30	2002
48	Calexico	Mexicali	Export	CA	Baja California, Mexico	SouthernCalifornia Gas Co	DNG Pipeline Ltd	25	16	1997
49	Otay Mesa	Tijuana	Both (but primarily exports)	CA	Baja California, Mexico	Sempra Energy Co	Gasoducto de Rosarito Ltd	350	30	2000
50	Everett	Boston	LNG Import	MA	LNG Tanker	Distrigas of Mass.	NA	1,300	NA	1971
51	Northeast Gateway	Offshore	LNG Import	MA	LNG Tanker	Algonquin Gas Trans Co	NA	800	24	2007
52	Cove Point	Cove Point	LNG Import	MD	LNG Tanker	Cove Point LNG	NA	1,800	NA	2003
53	Elba Island	Elba Island	LNG Import	GA	LNG Tanker	SCANA Interstate	NA	1,215	NA	2003
54	Lake Charles	Lake Charles	LNG Import	LA	LNG Tanker	Trunkline LNG	NA	2,100	NA	1981
55	Louisiana Energy Bridge	Offshore	LNG Import	LA	LNG Tanker	Sea Robin Pipeline	NA	500	36	2005
56	Sabine Pass	Cameron Parish	LNG Import	LA	LNG Tanker	Sabine Pass LNG Pipeline	NA	2,600	42	2008
57	Freeport	Brazoria	LNG Import	TX	LNG Tanker	Freeport LNG Pipeline	LNG Tanker	1,750	2@42	2008
58	Point Nikiski	Cook Inlet	LNG Export	AK	LNG Tanker	TAGS Pipeline	LNG Tanker	220	NA	1969

Notes: ~ indicates approximate in-service year. MMcf/d = Million cubic feet per day.

Source: Energy Information Administration, Gas Transportation Information System Exports/Imports Database, http://www.eia.gov/pub/oil_gas/natural_gas/analysis_publications/ngpipeline/impex_list.html

Four of the states through which Canadian natural gas moves--Montana, Idaho, North Dakota, and Minnesota-- account for about 75 percent of all the natural gas brought into the United States via pipeline from Canada. These states consume very little of the natural gas themselves, transferring it to other states with much higher natural gas demand. For example, Canadian natural gas entering through the states of Washington and Idaho supplies about one-fifth of the natural gas demand in California[viii]—a state that gets over 55 percent of its electricity generation from natural gas. Natural gas is also used heavily in California's buildings sector and for industrial uses. The state of Washington generally gets all its natural gas demand from Canada.

Natural Gas Imports from Canada by State of Entry
(million cubic feet)

	2011	2012
Idaho	606099	634194
Maine	149736	76540
Michigan	15193	11630
Minnesota	548686	406327
Montana	679849	754057
North Dakota	448977	433743
New Hampshire	19826	47451
New York	324475	276054
Washington	313922	312139
Vermont	10319	8247
Total	3117082	2960382

Source: Energy Information Administration, http://www.eia.gov/dnav/ng/ng_move_poe1_a_EPG0_IRP_Mmcf_a.htm

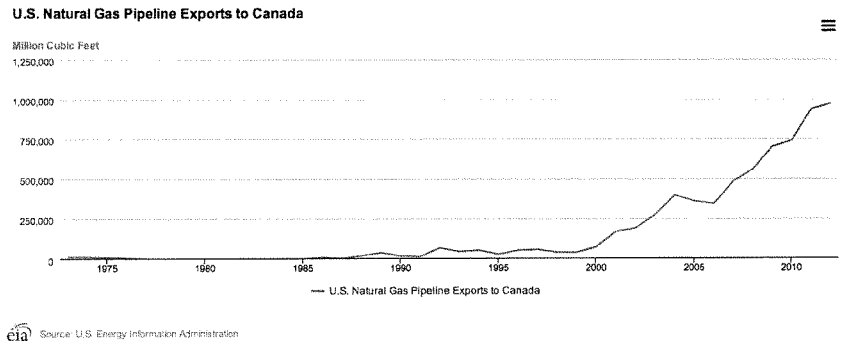
Montana serves as a point of entry for Canadian natural gas and pipes most of the Canadian gas it receives to North Dakota, who in turn pipes it to Minnesota and South Dakota. Both Wisconsin and Illinois benefit from Canadian natural gas coming by pipeline from the Dakotas and Minnesota. Illinois uses three-quarters of its natural gas supplies in the residential and commercial sectors, heating homes and offices, while Wisconsin uses slightly less of a percentage in those sectors (about two-thirds).

On the east coast, Vermont is entirely dependent on natural gas from Canada to meet its demand. Vermont was the first state to ban hydraulic fracturing[ix], which combined with horizontal drilling in shale structures, has made the U.S. the largest producer of natural gas in the world. Those technologies are now used to get natural gas from the Marcellus shale formation which supplies the Northeast.

Maine gets its natural gas supplies mainly from Canada and sends a large amount of natural gas to New Hampshire, who uses it to supply its own demand and also pipes supplies to Massachusetts. Massachusetts also receives domestic natural gas shipments and imports liquefied natural gas (LNG) from Trinidad and Tobago and Yemen via its LNG terminals in Everett, Massachusetts, and its Northeast Gateway terminal. Massachusetts' demand for natural gas is relatively high among U.S. states, using its natural gas supplies mostly in the buildings sector to meet residential and commercial demand, but also to generate electricity and for industrial uses. New York also receives natural gas imports from Canada, but receives a large amount of its natural gas from the Marcellus shale in Pennsylvania. Seventy percent of New York's demand is used in the buildings sector.

U.S. Natural Gas Exports to Canada

The United States also exports natural gas to Canada and those exports have been growing significantly since 2000. Between 2007 and 2012, U.S. natural gas exports to Canada have doubled, reaching almost 1 trillion cubic feet in 2012. Almost all U.S. natural gas exports to Canada are delivered from the Midwest via the Vector Pipeline that recently expanded its capacity allowing more natural gas to be exported. Natural gas exports from the Midwest to Canada reached a record-high level in 2011, totaling 2.4 billion cubic feet per day, and have decreased slightly in 2012.

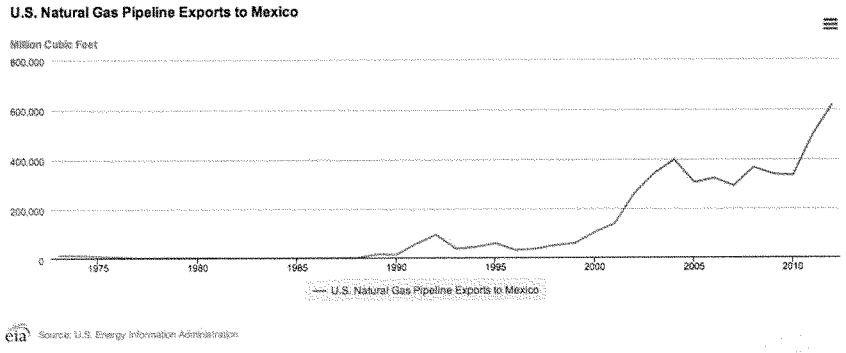


Source: Energy Information Administration, http://www.eia.gov/dnav/ng/hist/n9132cn2a.htm

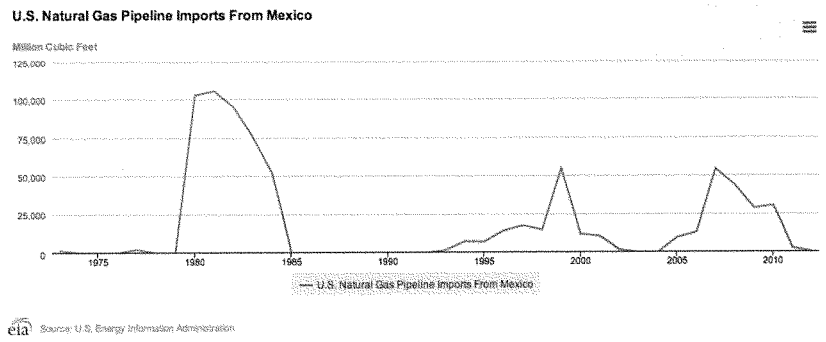
The United States exports only a small volume of gas to Canada from the Northwest and Northeast. However, natural gas exports from the Northeast to Canada have been rising since the beginning of 2011. Two projects, the Tennessee Gas Pipeline and the National Fuel Gas Supply expansion projects, commenced service on November 1, 2012 to Canada through Niagara, New York. With a total capacity of 0.57 billion cubic feet per day, these projects will significantly increase U.S. natural gas exports to Canada from the Northeast.

U.S. Natural Gas Trade with Mexico

The United States is a net exporter of natural gas with Mexico. Similar to the Canadian situation, U.S. exports to Mexico have been on an upward trend since 2000, and have more than doubled since 2007. In 2012, U.S. natural gas exports to Mexico totaled 620 billion cubic feet. In contrast, imports of natural gas from Mexico have been erratic and relatively small in scale.



Source: Energy Information Administration, http://www.eia.gov/dnav/ng/hist/n9132mx2a.htm



Source: Energy Information Administration, http://www.eia.gov/dnav/ng/hist/n9102mx2a.htm

The United States has 18 gas pipeline crossings with Mexico. The states serving as a point of entry for natural gas imported from Mexico are: Texas, Arizona, and California. The 18 points of entry between Mexico and the United States for natural gas are indicated on the map above and detailed in the above table. Of the 18 gas pipeline crossings, 13 are exclusively for natural gas exported from the United States, and 5 have the capability to be both export and import crossings.

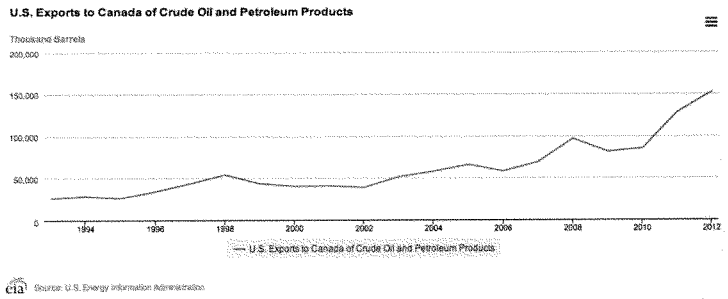
Natural Gas Imports from Mexico by State of Entry
(million cubic feet)

	2011	2012
California	2,171	0
Texas	501	314
Total	2,672	314

Source: Energy Information Administration, http://www.eia.gov/dnav/ng/ng_move_poe1_a_EPG0_IRP_Mmcf_a.htm

Oil and Petroleum Product Imports from Canada

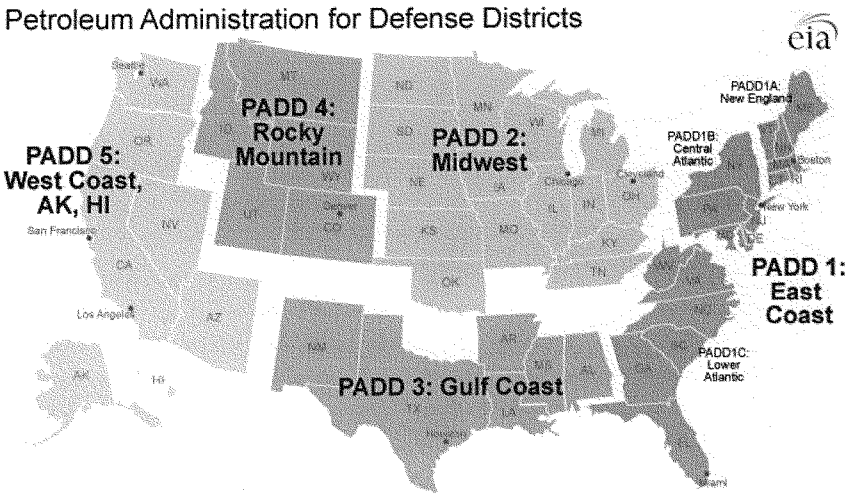
Canada is the largest supplier of foreign oil and petroleum products to the United States, followed by Saudi Arabia, Mexico, and Venezuela. Almost 99 percent of Canadian oil exports are supplied to the U.S. market. The United States imported over 1 billion barrels of crude oil and petroleum products from Canada in 2012, about 16 percent of our consumption and 28 percent of our oil and petroleum product imports. Canada's contribution to our oil and petroleum product imports has grown over time, even though the total amount of crude oil the United States buys from foreign suppliers is falling. Between the 20-year period from 1993 through 2012, Canadian imports of petroleum have increased by 150 percent. (See graph below.)



Source: Energy Information Administration, http://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=pet&s=mttimusca1&f=a

The majority of the crude oil imported into the United States from Canada comes via pipeline. There are, however, Canadian crude oil and petroleum products arriving by ship to the East, West, and Gulf coasts and more recently, shipments to U.S. refineries by train, resulting from pipelines reaching near capacity and delays in approving the Keystone pipeline.

Oil and petroleum product data are categorized within 5 Petroleum Administration for Defense Districts (PADDs) in the United States, which are geographic aggregations of the 50 States and the District of Columbia: PADD 1 is the East Coast, PADD 2 the Midwest, PADD 3 the Gulf Coast, PADD 4 the Rocky Mountain Region, and PADD 5 the West Coast. Due to its large population, PADD 1 is further divided into sub-PADDs, with PADD 1A as New England, PADD 1B the Central Atlantic States, and PADD 1C comprising the Lower Atlantic States. (See map below.) The PADDs were defined during World War II when the Petroleum Administration for War, established by an Executive order in 1942, used these five districts to ration gasoline. Although that Administration was abolished in 1946, Congress passed the Defense Production Act of 1950, which created the Petroleum Administration for Defense using these five districts. The PADDs help users of petroleum data assess regional petroleum product supplies.



Source: Energy Information Administration, http://www.eia.gov/todayinenergy/detail.cfm?id=4890&src=email

Canadian oil imports from Canada into the Midwest and Rocky Mountain regions (PADDs II and IV) arrive via pipeline. The other PADDs also receive Canadian petroleum imports via ship. Due to full capacity on the pipeline system, rail is also being used to move oil sands from Alberta, Canada to the East and Gulf coasts of the United States. An estimated 120,000 barrels of oil per day are being moved by train from Alberta to those regions. That number could reach 200,000 barrels per day by the end of the year when several rail terminals are expected to be completed.

While rail costs are double pipeline tariffs, the lower cost Canadian oil make it profitable to use rail. Last year Canadian light oil traded as low as $68 per barrel and heavy oil at $48 per barrel, while refiners on the U.S. Gulf Coast and northeast were paying overseas prices for their heavy oil feedstock of around $110 per barrel. The large differential made room for the higher priced rail tariff, particularly since pipeline capacity is limited from Canada into the United States. However, that price differential is no longer as great partly due to increased demand by U.S. refineries for Canadian crude that has resulted from the rail shipments.[x]

Since pipeline capacity is also tight within the United States, particularly out of the Bakken in North Dakota, rail is also being used for more interstate transport. The Energy Information Administration estimates that 1.37 million barrels per day of oil and petroleum products were moved by rail during the first half of 2013, an increase from 927,000 barrels per day during the first six months of 2012.[xi]

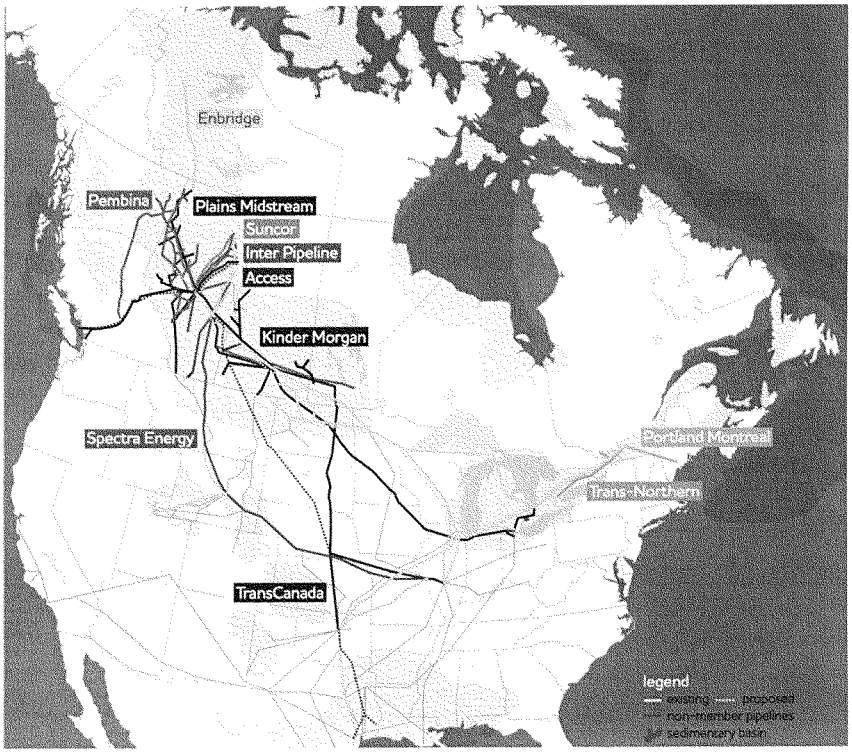
Oil and Petroleum Product Imports from Canada by PADD Region

(thousand barrels)

	2011	2012
East Coast	212,204	197,827
Midwest	594,353	664,085
Gulf Coast	57,774	43,319
Rocky Mountain	82,068	97,670
West Coast	74,205	78,484
Total	1,020,604	1,081,385

Source: Energy Information Administration, http://www.eia.gov/dnav/pet/pet_move_impcp_a2_r10_ep00_ip0_mbbl_a.htm

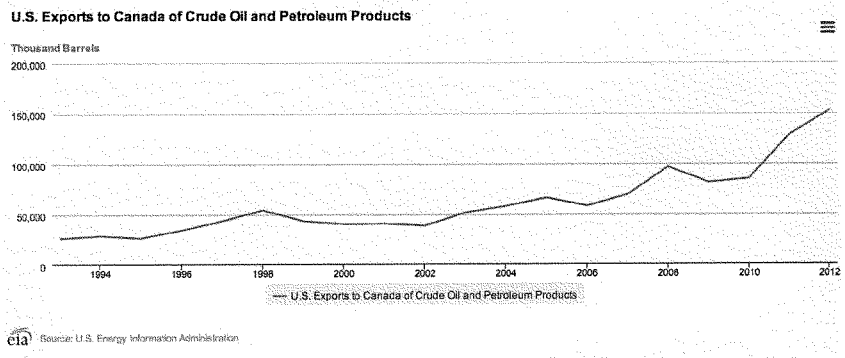
While the Midwest receives the largest amount of Canadian petroleum imports, some of those imports are piped to other regions, particularly to the Gulf coast. The following graph depicts the liquid fuel pipelines from Canada to the United States.



Source: *http://www.cepa.com/wp-content/uploads/2013/06/cepa-liquids-may-30.pdf*

U.S. Oil and Petroleum Product Exports to Canada

Similar to natural gas, U.S. oil and petroleum product exports to Canada more than doubled since 2007, reaching 152,312 thousand barrels in 2012. As with natural gas, oil and petroleum product exports to Canada are based on pipeline movements, direction of flows and location of supplies. That is, it may be easier for a region in Canada to get its oil supplies from the United States than to move the oil between Canadian regions.



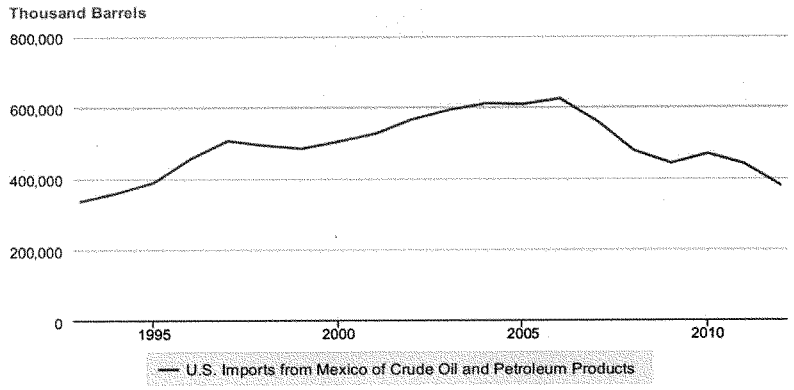
Source: Energy Information Administration, http://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=MTTEXCA1&f=A

U.S. Oil and Petroleum Product Trade with Mexico

Mexico is the third largest supplier of oil and petroleum products to the United States supplying almost 400 million barrels in 2012. Our imports from Mexico peaked in 2006 at 622 million barrels. Mexico exports about 85 percent of their oil exports to the United States via tanker. Most Mexican crude oil exports into the United States are of the Maya blend, which is a heavy crude that U.S. Gulf Coast refineries can process.

Similar to natural gas, U.S. exports of oil and petroleum products to Mexico have doubled since 2007 and were almost 207 million barrels in 2012.

U.S. Imports from Mexico of Crude Oil and Petroleum Products



eia Source: U.S. Energy Information Administration

Oil and Petroleum Product Imports from Mexico
(thousand barrels)

	2011	2012
East Coast	3,459	3,045
Midwest	3,608	0
Gulf Coast	425,644	369,734
Rocky Mountain	0	0
West Coast	7,541	5,913
	440,252	**378,692**

Source: Energy Information Administration, http://www.eia.gov/dnav/pet/pet_move_impcp_a2_r30_ep00_ip0_mbbl_a.htm

Energy Independence Nears

The International Energy Agency (IEA) in its World Energy Outlook 2012[xii] is predicting that the United States will become the world's largest oil producer by 2017, overtaking both Saudi Arabia and Russia. The IEA is not the only agency with this prediction; Citigroup Inc. indicated that the United States will achieve this goal before the end of this decade. The IEA also expects that North America will become a net oil exporter by 2030, the United States will become almost energy independent by 2035 and OPEC will be exporting 90 percent of its oil to Asia, changing the security dynamics in the Middle East.[xiii]

These accomplishments can only come about if the United States maintains a well working energy system where markets are allowed to work and where we are allowed to trade with neighboring countries without artificial impediments. With Canada's oil reserves at over 170 billion barrels, Canada can help the United States decrease its reliance on Persian Gulf oil, but it must be allowed to trade energy freely and transport it in a safe and reliable manner.

Net oil imports are now just 35 percent of oil consumption, the same as they were in 1973, when the oil embargo took place. But, since Canada and Mexico are supplying over 60 percent of our net oil imports, in reality our energy dependence on non-North American oil is just 14 percent. With increasing oil production here and in Canada, that ratio can decrease further as long as impediments to production and energy transport are removed.

Due to hydraulic fracturing and the shale oil and gas revolution, the United States is already the world's largest natural gas producer and the world's largest liquid fuels producer. The milestones that IEA cited can be reached as long as we act with prudence.

A Diverse, Flexible, and Secure Energy Supply

Energy Independence is just one factor in securing a safe and reliable energy future. We must also have a diverse and secure energy system that allows for the flexible functioning of markets.

Natural gas has become an increasingly important fuel in the United States as it is displacing coal in the electric generation sector and backing up intermittent renewable energy when its resource (the wind or the sun) is not available to generate power. Natural gas is displacing coal in the generation sector due to its low cost and due to onerous regulations promulgated by the EPA that forces premature retirements of existing coal-fired power plants and as proposed EPA regulations would result in no new coal-fired construction since the technology to control carbon dioxide emissions from those plants is not commercially available. Other uses of natural gas are also on the horizon as a transportation fuel and as

exports of liquefied natural gas (LNG). Auto manufacturers are beginning to release dual fuel vehicles (Chevy Impala, light trucks, etc); and the Department of Energy has approved a number of LNG export terminals.

Thus, it is important to have available sources of natural gas at the ready without bottlenecks within the system. As an example, consider the New England energy market this past winter when temperatures plummeted and heating fuel demand increased. Because the system in the Northeast was stressed, it led to natural gas prices in the $30 to $36 range per million Btu and to electricity prices to $225 to $260 per megawatt hour.[xiv] Energy diversity of resource and geographical location is important for security of supply. If demand increases in one area of the country, a flexible energy system can handle the problem by receiving supplies from other locations. Having a strong delivery system that crosses borders with enough available capacity can help alleviate such problems.

Diversification of supply is a prudent strategy to a solid and secure energy system. Sound resource planning means that "you do not put all your eggs in one basket." More pipelines provide greater capacity to move energy supplies to where they are most needed. A strong delivery system that crosses borders is akin to having a good highway system. It is important to ensure that the United States has an energy system that provides access to energy resources to enable a flexible, reliable, and stable market place.

Conclusion

Petroleum imports from Canada to the United States increased by almost 7 percent in 2012 from 2011 levels. These imports are mainly moved via pipeline to the United States, though the ports on the U.S. coasts also receive Canadian oil imports by ship, and more recently petroleum has been shipped by rail. Clearly without these imports, the east coast and Midwest would suffer the most in terms of limited petroleum supplies. Since pipelines are the least expensive and safest transportation mode, it would be beneficial to the United States to increase that capacity in order to access Canadian oil reserves--- the third largest in the world at 173 billion barrels.[xv]

Natural gas imports from Canada are piped into 31 entry points in the United States. These imports help to meet demand in many of the northern U.S. states that use it to heat homes and to generate electricity. For security of supply and diversity of supply reasons, we need to ensure that the North American energy system is sufficiently flexible for markets to work and to encourage the development of new energy supplies.

[i] Institute for Energy Research, North American Energy Inventory, December 2011, http://www.instituteforenergyresearch.org/wp-content/uploads/2013/01/Energy-Inventory.pdf

[ii] U.S. Department of Transportation, Pipeline Basics, http://primis.phmsa.dot.gov/comm/PipelineBasics.htm?nocache=8264

[iii] Bureau of Transportation Statistics, U.S. Oil and Gas Pipeline Mileage, http://www.rita.dot.gov/bts/sites/rita.dot.gov.bts/files/publications/national_transportation_statistics/html/table_01_10.html

[iv] U.S. Department of Transportation, http://primis.phmsa.dot.gov/comm/Index.htm?nocache=4323

[v] The Manhattan Institute, Pipelines are the Safest for Transportation of Oil and Gas, June 2013, http://www.manhattan-institute.org/html/ib_23.htm#.UmVe-nCsiSp

[vi] Oil On the Tracks: How Rail Is Quietly Picking Up the Pipelines' Slack, October 8, 2012,http://www.desmogblog.com/2012/10/02/oil-tracks-how-rail-quietly-picking-pipeline-s-slack

[vii] The Hill, Canadian ambassador: Path to energy independence is through Keystone XL, October 22, 2013, http://thehill.com/blogs/e2-wire/e2-wire/329933-canadian-ambassador-path-to-energy-independence-is-through-keystone-xl

[viii] Energy Information Administration, Natural Gas Annual, Table 12, Interstate movements and movements across U.S. borders of natural gas by state, 2011, http://www.eia.gov/naturalgas/annual/pdf/table_012.pdf

[ix] Treehugger, Vermont Bans Fracking: We Can Live Without Oil and Natural Gas, But Cannot Without Clean Water, May 18, 2012, http://www.treehugger.com/energy-policy/vermont-bans-fracking-can-live-without-natural-gas-cannot-without-clean-water.html

[x] Christian Science Monitor, Oil by train runs out of track, April 27, 2013, http://www.csmonitor.com/Environment/Energy-Voices/2013/0427/Oil-by-train-runs-out-of-track

[xi] Energy Information Administration, Rail delivery of U.S. oil and petroleum products continues to increase, but pace slows, July 10, 2013, http://www.eia.gov/todayinenergy/detail.cfm?id=12031

[xii] International Energy Agency, World Energy Outlook 2012, November 2012,http://www.iea.org/publications/freepublications/publication/English.pdf

[xiii] Reuters, U.S. to overtake Saudi as top oil producer: IEA, November 12, 2012,http://www.reuters.com/article/2012/11/12/us-iea-oil-report-idUSBRE8AB0IQ20121112

[xiv] Nuclear Energy Institute, Why Nuclear Energy Is Critical to American Energy Diversity, March 5, 2013, http://neinuclearnotes.blogspot.com/2013/03/why-nuclear-energy-is-critical-to.html

[xv] Energy Information Administration, International Energy Outlook, Table 6, http://www.eia.gov/forecasts/ieo/table6.cf

Mr. SCALISE. All right. And thank you.
And Mr. Kyles.

STATEMENT OF JOHN H. KYLES

Mr. KYLES. Thank you, Mr. Chairman, and distinguished members of the committee. Thank you for inviting me here to testify today on the need for reform of the presidential permit program for cross-border energy infrastructure.

I am John Kyles, senior attorney for Plains All American. We are based in Houston but have pipeline infrastructure across the country, including several pipelines across the U.S.-Canadian border.

Today, I will testify on the need for reform of the State Department presidential permit process for liquid pipeline projects. Despite widespread public attention to Keystone XL, there are many other presidential permit applications stuck at the State Department also facing multiyear delays. Many of these projects are simple changes of ownership filings with no impact on the pipeline's operations or border-crossing status. And yet they face lengthy delays at the State Department. We support the goals of Chairman Upton and Congressman Green to streamline the permit process and exempt these projects with minimal policy or practical impact on society.

Every day, Plains All American handles over 3.5 million barrels of crude oil and natural gas liquids such as butane, propane, and ethane. We have approximately 16,500 miles of active crude oil and natural gas liquid pipelines and gathering systems.

The pipelines I will highlight first today run from Canada to Michigan crossing the U.S.-Canadian border under the Detroit River near Detroit, Michigan, and under the St. Clair River at Port Huron, Michigan. These pipelines deliver liquefied petroleum gases such as propane and butane for industrial uses in manufacturing, chemicals, plastics, and similar products, as well as gasoline refining.

Simply put, these pipelines deliver the raw materials that support good-paying manufacturing jobs in Michigan and beyond. These are blue-collar jobs with pay and benefits to support a family, provide healthcare, or send a child to college. So it is doubly frustrating when something as important as this is caught up in years of bureaucratic delay under the current presidential permit in process.

Plains All American currently has two presidential permit applications pending for seven pipelines crossing the U.S.-Canadian border into Michigan. Our need to apply for a presidential permit was triggered when Plains bought these pipelines in 2012. Under current State Department guidelines, a change in ownership of the pipeline triggers the need to apply for a new presidential permit.

These pipelines already had pending name change permit applications from their previous change of ownership in 2007. So for as long as 5 years the State Department has been considering whether to issue a presidential permit for something almost as simple as a name change at the top of the permit. There have been no operational changes of the pipelines, no change in materials or physical or environmental impacts, just many years of review but still no decision.

We are allowed to continue operating the pipeline consistent with the terms of the existing presidential permit, but we face the uncertainty of not knowing when or if we will ever get the presidential permit we are supposed to have for these pipelines or under what terms.

Another area of uncertainty is our Poplar-Wascana pipeline crossing the U S.-Canadian border near Raymond, Montana; and Saskatchewan. This, too, involves an even more benign change of ownership presidential permit at the State Department. The Poplar-Wascana pipeline change is only required pursuant to an internal corporate reorganization that affects two wholly owned Plains subsidiaries. However, the application has been delayed by State considering whether to review the interconnection of a new Bakken North pipeline into Poplar-Wascana for movement of crude into Canada. This interconnection will have no impact on the border crossing or the environment.

Now, we imagine that the State Department officials working on these applications are dedicated public servants. Part of the problem, though, is there appears to be little guidance to these folks or to us about the appropriate process for processing presidential permit applications.

As this committee knows, there is no authorizing statute. Congress has the right to provide requirements for this program. There are no laws about what criterion is required for calculating presidential permit compliance, what to examine, or any timelines for completion of the Department's review. The unfortunate result of the lack of guidance is uncertainty and delay.

Mr. SCALISE. If you could begin to wrap it up.

Mr. KYLES. Our 5-year delay for simple paperwork is an example of why this program needs reform and your bill would be welcome.

That concludes my testimony. I would be happy to answer any questions. Thank you.

[The prepared statement of Mr. Kyles follows:]

Testimony of John H. Kyles
Senior Attorney, Plains All American Pipeline, L.P.
before the Committee on Energy & Commerce
Energy & Power Subcommittee
U.S. House of Representatives

"Hearing on H.R. 3301, the North American Energy Infrastructure Act"

October 29, 2013

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Today, I will testify on the need for reform of the State Department Presidential Permit process for liquid pipeline projects. While delay of the Keystone XL pipeline project has garnered widespread public attention, there are many other Presidential Permit applications stuck at the State Department also facing multi-year delays. It is my understanding that many of these projects are simple changes of ownership filings with no impact on the pipeline's operations or border-crossing status. And yet they face lengthy delays at the State Department. We support the goal of Chairman Upton and Congressman Green to streamline the permit process and exempt those projects with minimal policy or practical impact on society.

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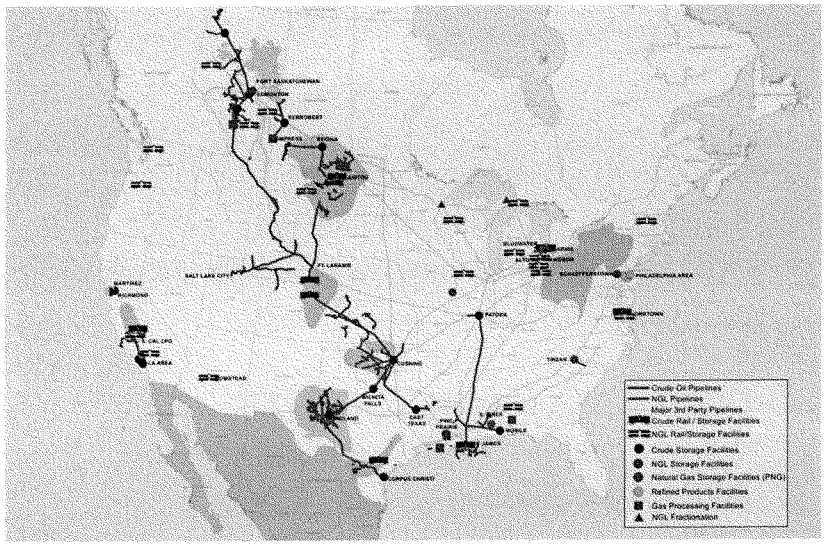

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collar jobs, with pay and benefits to support a family, provide healthcare, or send a child to college. Our pipelines provide exactly the kind of jobs Michigan and the rest of the country need and want. So, it is doubly frustrating when something as important as this is caught up in years of bureaucratic delay under the current presidential permitting process.

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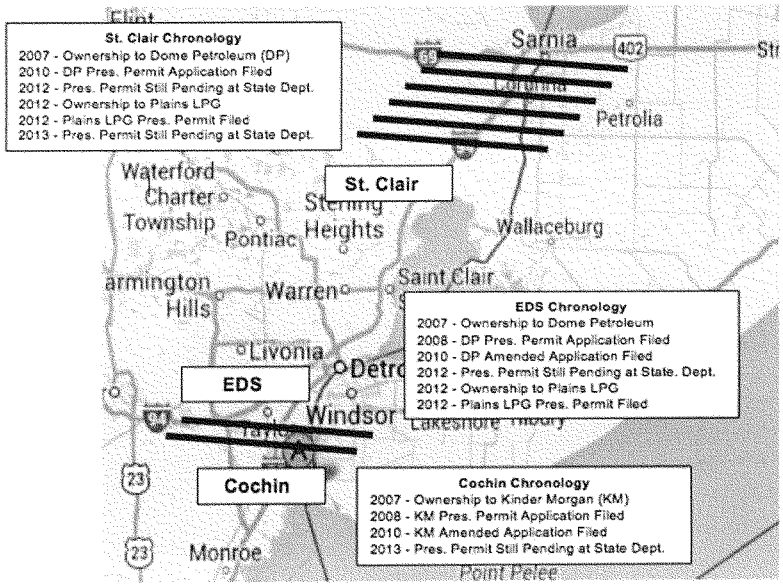
PRESIDENTIAL PERMIT CHRONOLOGY AT DETROIT RIVER AND ST. CLAIR RIVER CROSSINGS



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These pipelines already had a pending name change permit application from their previous change of ownership in 2007. So, for as long as 5 years, the State Department has been considering whether to issue a presidential permit for something almost as simple as a name change at the top of the permit. There have been no operational changes of the pipelines, no change in materials or any physical or environmental impacts. Just many years of review, document requests, pubic notices, additional document requests, but still no decision.

We are allowed to continue operating the pipeline consistent with the terms of the existing Presidential Permit, but we face the uncertainty of not knowing when or if we will ever get the presidential permit we are supposed to have for these pipelines and whether constraints might be placed on our future use of the pipeline.

Another area of uncertainty is on our Poplar-Wascana pipeline crossing the US-Canadian border near Raymond, Montana and Saskatchewan. This too involves an even more benign change of ownership presidential permit at the State Department. The Poplar- Wascana pipeline name change is only required pursuant to a corporate reorganization that effected the former holder and the new holder of the pipeline. Both entities are wholly owned Plains subsidiaries. However, the application has been delayed while State considers whether to review the interconnection of our new Bakken North pipeline into Poplar-Wascana for movement of crude north across the border into Canada. This interconnection will have no impact on the border crossing and no impact on operation of the pipeline at the border.

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Now, we imagine that the State Department officials working on these and other applications are dedicated public servants. Part of the problem though, is there appears to be little guidance to these folks or us on what is the appropriate process for consideration and approval. The entire State Department rules and procedures for this process is one single page, which I can submit for the record.

As this committee knows, there is no authorizing statute from the Congress laying out the requirements for this program. There is no guidance in the law on what should be reviewed, and what can be exempted because it is too small to make a difference. There are no laws on what criteria to use, what to examine, how or by when. The unfortunate result of the lack of clear guidance is uncertainty and delay.

Our 5 year delay for simple paperwork is an example of why this program needs reform and your bill would be welcome. That concludes my testimony and I would be happy to answer any questions. Thank you.

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Mr. SCALISE. I want to thank all of the panelists for their testimony and we will now go to member questions. I will start with myself.

I want to ask Mr. Mills, in your testimony, you talk about some of the things that a lot of us on this committee have advocated for a long time, and that is North American energy independence. Of course we advocate an all-of-the-above energy strategy and of course we have seen a revolution, especially as it relates to natural gas, oil, other technologies that have allowed us to access so much more natural resource here in America that allows us to be energy independent. We also talked about the amount of investment that is sitting on the sidelines. I think you referenced over a trillion dollars and the abilities that we would have if we have a more streamlined process as this bill envisioned. Can you expand a little bit on what you have seen in terms of the investment that can come in the job creation here in America that would also come with a more streamlined process for permitting to access that energy?

Mr. MILLS. Well, thank you, Mr. Vice Chairman. The issues that we have done, it is utterly fascinating because I am basically a tech guy and I spent most of my life in microprocessors and in fact missile systems, as well as energy side, and I am very bullish about what the tech community will do and is going to do for America's economy.

The fascinating thing is that the oil and gas sector dominantly—and to some extent the coal sector but mostly oil and gas—has done more for the U.S. economy in the last 5, 6 years in terms of GDP generation, job creation, and the general expense to the economy than any other single sector of the economy. It is stunning what oil and gas has done. The reversal of foreign direct investment is what is utterly fascinating. Instead of dollars leaving America to invest in Africa, which is productive and a good thing, but from the viewpoint of the United States, the monies are from Africa and from the Middle East and from Russia included and from China and from India and Malaysia are flowing to the United States to invest in manufacturing operations, which I would include. But the numbers are in the hundreds of billions of dollars collectively.

This has extraordinary ripple effect through the economy in terms of job creation because these are sticky jobs as the economist at U Cal Berkeley calls them. You can't really easily outsource the jobs that this creates. And it is not just jobs in the oil field. For every job in oil and gas, coal fields, there are 5 or 6 collateral jobs that are geographically located not just in California or Texas, God bless them both, but in dozens of States, which is magnificent.

Mr. SCALISE. And we see that in Louisiana with the spinoff jobs that are tied to energy production and what can come to that and also the value of the more we do, the more we displace, as you talk about, the oil that we are getting from some of the countries that don't like us. And clearly we have got a friend in Canada and in Mexico, and the more we can trade with those friends, it is less that we have to get from some of these countries that don't like us and take that money in essence and use it against our own national interests. And I know you talked about that.

Mr. Kyles, I wanted to ask you, you talked about the experiences in Michigan specifically with the delays that you are experiencing and even of something as basic as a change of ownership. And obviously this legislation addresses that problem and streamlines the process as well. Can you talk about the job impact that a bill like this would have if you don't have to go through bureaucratic red tape, nothing to do with environmental laws. Those have already been done. If you are making changes as basic as ownership where you have already cleared so many of the other hurdles and then in essence you have to start all over again with another red tape process, how does it hurt jobs and in essence how would this bill help streamline that process?

Mr. KYLES. Well, fortunately, under the current structure, a pipeline operator is able to continue the operations of an existing pipeline as long as the pipeline is operated in the same manner it has before. The problem, however, is the chilling effect there is on investment because you don't know what the change of ownership process will entail.

Mr. SCALISE. Any kind of example of job impact it is having into the two Michigan examples you used?

Mr. KYLES. Well, at this point there has been no negative impact with respect to the jobs. However, there possibly could be in the future in another circumstance where there may not be a willingness to invest in a pipeline because there is a question about the delays and completion of the ownership change.

Mr. SCALISE. Yes. And obviously that can hurt not only investment——

Mr. KYLES. Absolutely.

Mr. SCALISE [continuing]. But also job opportunities.

Mr. KYLES. Absolutely.

Mr. SCALISE. I want to ask you, Mr. Burpee, you talked about the experiences in Canada and they have gone through a process similar to this. They have streamlined their process. Can we learn from some of the things that they did that are smart reforms they made that we can then implement here as well?

Mr. BURPEE. Yes, there are few and they did require legislative change. The fundamental issue was one of a variety of pieces of legislation. Regulations were put in piecemeal and didn't work together to foster an economic environmental review. Right now, that is being streamlined as well as working with the provinces to harmonize the opportunity for equivalency. Probably the most enlightening part that happened is about 5 years ago they created a major project management office recognizing how many different departments in the Federal Government different projects had to go through. And just by coordinating that review, they got review time down from an average of 4 years to 22 months. They realized that you couldn't get past 22 months without looking at legislatively get the acts and bring them up into the 21st century, which is the key part. A lot of things, especially electricity, have changed, mandatory reliability standards that are North American-wide, that there are a lot of elements there that were just outdated and not protecting the environment.

Mr. SCALISE. All right. Thank you very much.

Mr. McNerney.

Mr. MCNERNEY. Thank you. Our cross-border tar sands pipelines such as the Keystone XL and Alberta Clipper are significant projects and they take billions of dollars and last decades and decades. They cross many States and take land from hundreds of landowners. These projects have environmental impacts, economic impacts, and impacts on communities and natural resources. I would like to start my question with Mr. Mills. I couldn't help but get caught up in your enthusiasm and your optimism, but I would like to know if the Institute has a position on global warming and its impact on our national infrastructure?

Mr. MILLS. The Institute does not take an institutional position, the Manhattan Institute, on issues like global warming or any other issue. The Institute is structured as a quasi-academic research organization, so individual fellows, senior fellows may have positions, absolutely.

Mr. MCNERNEY. Well, it is certainly a significant part of our energy question and our energy challenge.

Commissioner Mears, what is your view of the Federal review process required by NEPA and does the NEPA process drive better projects with less environmental harm than projects would under the proposed legislation?

Mr. MEARS. Absolutely. NEPA is one of those keystone environmental laws in the United States. On one——

Mr. MCNERNEY. Well, keystone is an unfortunate use of terms.

Mr. MEARS. Sorry. It is a foundational law and environmental law in the United States and it is an integrating law. And, for instance, the way that it was described earlier, the way that FERC can, in its role, review natural gas projects where it will look at a whole host of economic and environmental issues and will also serve as a convener of the other State and Federal agencies that participate in the process. When they do the environmental impact statement review, that in turn feeds the determinations made under the Clean Water Act or Clean Air Act or under State land use laws. All of those laws and the implementation of those by other agencies, whether Federal or State, benefit from having a comprehensive environmental impact statement analysis, as well as an evaluation of alternatives, alternative project paths or locations that might have less environmental impact.

Mr. MCNERNEY. Thank you. Mr. Blackburn, tell us why you believe that the NEPA actually produces better outcomes for citizens, communities, and even for industry?

Mr. BLACKBURN. Thank you, Representative McNerney.

Well, having worked with a lot of landowners in South Dakota and Nebraska, it is clear that without the NEPA process there, without the National Environmental Policy review process in those States, the citizens really would have had no information and no opportunity to learn about how the impacts of the Keystone XL pipeline could be limited on them. Without that kind of review, citizens would have had even more problems and been more opposed to the pipeline there. You know, having a clear, understandable, robust review process means that citizens can be involved. When citizens aren't involved effectively in these decisions, they tend to get their backs up. They tend to become resistant to them, and then their actions become unpredictable.

With the Keystone XL pipeline, the most unpredictable part of that was the legislative action in Nebraska. If there had been an existing permitting process in Nebraska, then probably there wouldn't have been a legislative effort and then the process there would have moved ahead more predictably. But at least NEPA gave those citizens, those ranchers and farmers and other folks that are concerned about the pipeline, an opportunity to participate, to learn about the pipeline, and to learn how to protect their interests.

Mr. MCNERNEY. Well, certainly, if the citizen input is a part of the process, there is going to be a better chance of acceptance by the local communities and less chance of lengthy, costly legal battles.

Mr. BLACKBURN. Absolutely. You know, with Americans, if they have a fair fight, most people will go through the process of a regulatory review and they will be OK with the outcome one way or the other. If they are frozen out of the process, Americans will fight to protect their interests, and that can become very unpredictable what happens.

Mr. MCNERNEY. I think a current example is the Yucca Mountain nuclear repository in Nevada.

Commissioner Mears, how did the citizens of Vermont feel about this project, and how many local government jurisdictions have weighed in?

Mr. MEARS. Well, the only jurisdiction that I recall weighing in formally, although there may have been several, but the one I know weighed in was Irasburg because their drinking water is affected, but I know that there was some consideration at a town meeting day last year by a number of communities, but I don't recall exactly how many formally weighed in. But I can say that regardless of how Vermonters may feel about the ultimate pipeline reversal in this instance, I can speak with assurance that almost all of them would feel strongly about wanting to have a voice in a decision like this one.

Mr. MCNERNEY. Thank you. I yield back.

Mr. SCALISE. All right, thank you.

The gentleman from Illinois, Mr. Shimkus.

Mr. SHIMKUS. Thank you, Mr. Chairman. I just want to remind everybody that we do have the Keystone pipeline. We talk a lot about Keystone XL, and I guess I am just wondering why we didn't have a 5-to-10-year delay on Keystone and we have had a 5-year plus delay on Keystone XL? I think the answer is pretty simple. We had a change in administration that doesn't want to move heavy crude via pipeline.

And the Keystone pipeline produces crude oil directly to my district to my refinery and then it goes to Chicago and then it gets moved to Ohio and Indiana. It is very critical. The heavy crude from the oil sands equates to the Venezuelan crude or the Saudi heavy crude, and if anything it is displacing our reliance on heavy crude oil it is the oil sands. That is why I go back to my initial comments about national security interests. If you want to see anything that is a national security interest, it is the Keystone pipeline and it is the Keystone XL pipeline. And that is why the definition is so critical in what we are talking about.

Pipelines are the safest, cheapest way to move heavy crude liquid products bar none. It is really not debatable. It is the safest, cheapest way to move bulk crude versus trains, as we have heard, versus barges, as we have heard, versus trucks. And for the individual consumer, you can't even calculate how much more beneficial it is to the individual citizen on the receiving of that product and then the refinement of that product.

The question I have is I would have liked for the Department of Energy to have come. We invited them. They decided not to show. And I would have asked them about this whole free trade agreement provision on bulk commodity products. I am from southern Illinois. Corn and beans moves across the international border. Crude oil is a bulk commodity product so I would have asked them that terminology of "shall be granted without modification or delay" where it took DOE 4 months. The law says "shall be granted without modification or delay" for natural gas. And that is an important aspect because natural gas is a commodity product.

I want to ask Ms. Hutzler, Mr. Mills, and Mr. Kyles, why is it important to reduce obstacles to importing or exporting natural gas to or from Canada and Mexico? So, Ms. Hutzler? And if you can quickly because I have about 3 more other questions.

Ms. HUTZLER. Oh, OK. Well, mainly so that we have flexibility in where our supplies are coming from. Natural gas is going to be the fuel of choice. We are going to see it grow in the United States both in terms of houses switching from heating oil to natural gas, in terms of electric generation. It backs up renewable technologies that are intermittent technologies, and you need to be able to get that from different sources of supply.

Mr. SHIMKUS. Mr. Mills?

Mr. MILLS. The central issue is a philosophical issue, which properly belongs to the purview of Congress is to your point, that these commodities are essential to the function of the North American economy. We already have established the bipartisan philosophical principle of NAFTA with respect to the free movement and free trade of goods and manufactured products. In my book the problem is definitional. We manufacture oil and gas in North America now. This is a manufactured product. You don't just dig it out of the ground. It looks like a manufacturing operation. There should be no constraints in North America politically, economically, or philosophically. It should be done within each country's purview of environmental regulation and that is it.

Mr. SHIMKUS. Mr. Kyles?

Mr. KYLES. I would agree with the previous comments. Primarily, however, Plains All American is involved in crude oil and liquid fluids, natural gas liquids transportation, so if you are talking about other forms of natural gas, then that is not within our operations.

Mr. SHIMKUS. The same three, what would be the impact if Canada started restricting their exporting of natural gas based upon an argument that they wanted to keep natural gas cheap in Canada? Let's go Mr. Mills first.

Mr. MILLS. Well, I confess I am a Canadian and I have lived in Washington, DC, for 30 years. There was a debate along those lines. In fact in Canada for years, as my colleague here will attest,

in that Canada came to the conclusion that the idea of being an isolationist in economic terms was counterproductive to driving down not just low cost for Canadians, which is symmetrically the same for Americans, but for boosting the economy.

Mr. SHIMKUS. My time is expired. And, Chairman, I will just yield back. Thank you very much.

Mr. SCALISE. Thank you.

The gentleman from California, ranking member of the full committee, Mr. Waxman.

Mr. WAXMAN. Thank you very much, Mr. Chairman.

Major fossil fuel energy projects have climate impacts that we can't just ignore. These projects also affect commodity prices, landowners, safety, jobs, natural resources, economic competitiveness, pollution, and many other legitimate concerns. The Federal Government is the only entity that can ensure that all of these concerns are taken into account. For cross-border pipelines, this is done by applying a public interest test before issuing the presidential permit. Do any of the witnesses here think that we should approve a cross-border pipeline that is not in the interest of the American public? If any of you believe that, just hold up your hand.

No one seems to be holding up his or her hand.

None of us should support approving projects that are contrary to the public interest. But that is precisely what this bill would allow. It eliminates Federal environmental review and consideration of the public interest, and then it requires approval of cross-border pipelines unless the pipeline would affirmatively harm national security. It is even more extreme than that. This bill could actually force approval of a pipeline that the State Department finds is contrary to the public interest. And I called this earlier in my opening statement the Keystone XL zombie clause. Perhaps it is appropriate we are considering this bill 2 days before Halloween.

The bill preserves the existing permitting process for pending projects but only until the application is denied or until July 1, 2016, if there is no decision before then. So under this bill if the administration finds that the Keystone XL tar sands pipeline is contrary to the public interest, that is not the end of the matter. TransCanada could simply reapply when the new permitting provisions become effective on July 1, 2015. And the Department of Commerce would then be required to rubberstamp the pipeline by October 29, 2015, absent harm to the national security.

Well, let's be clear. The administration could determine that the Keystone XL pipeline is simply too dangerous to the climate. It is too risky to important aquifers of the Midwest. And overall, it just isn't in the interest of the American public. But none of this will matter. This bill virtually guarantees that Keystone XL pipeline would be approved within 2 years. And some controversial cross-border projects such as the project that would bring tar sands crude from Montreal to Portland, Maine, would need no Federal approval or review under this new process.

Commissioner Mears, does this make any sense? How would the citizens of your State view the idea that Congress would require approval of a pipeline that was contrary to the public interest?

Mr. MEARS. Thank you for the question. Clearly, in the State of Vermont the citizens would be frustrated with the process that

they had no opportunity to have input into and in which the Federal Government wasn't playing its obligation to look at the international and national implications of a project that runs across a national border and multiple State boundaries. Our State doesn't have the resources or capacity to consider the full range of effects, and yet we suffer the implications of these kinds of decisions. Vermont is for instance particularly vulnerable to the effects of climate change as we experienced after Tropical Storm Irene and the dramatic flooding that happened there.

Mr. WAXMAN. So you wouldn't like that?

Mr. MEARS. Would not like it.

Mr. WAXMAN. OK. Mr. Blackburn, you have explained that the process is already heavily tilted toward the oil industry and that it provides minimal opportunity to address citizens' concerns. How do you think the Keystone XL zombie clause would be received by the landowners and others affected by that pipeline?

Mr. BLACKBURN. I think the landowners and the citizens in Minnesota who would be affected by the Alberta Clipper pipeline expansions would be incredibly frustrated that there would be no meaningful national review of whether that was truly in the country's national interest. After all, it is not just the individual impacts on the ground. It is also the question about whether it is appropriate or not to import this very dirty fuel. And that itself is the question for the Federal Government and not necessarily for each individual State. At the same time, we are very clear that Minnesota does have limited authority, you know, over interstate pipelines, and that is really something the Federal Government should look at.

Mr. WAXMAN. Thank you.

This bill eliminates all comprehensive Federal environmental review and all opportunities for public participation. It makes sure that Keystone XL and other controversial pipeline projects are rubberstamped under this new process even if they are denied under the existing process, and I think, Mr. Chairman, that is not a defensible approach.

I yield back my time.

Mr. SCALISE. The gentleman yields back.

Now, the gentleman from Texas, Dr. Burgess.

Mr. BURGESS. Thank you, Mr. Chairman.

I just would like to follow up a little bit on Mr. Shimkus' last questions and I think he had asked you, Mr. Mills, about was it in Canada's best interest to simply isolate themselves and not sell their products in the form of natural gas outside their borders. And, Mr. Burpee, I couldn't help but notice that you were having to contain yourself during that discussion. Could you share with the committee what was on your mind?

Mr. BURPEE. The debate that was referred to goes back to early '80s and the creation of a national energy program that looked to protect Canadian energy users, give them cheap relative to world prices. We have moved on from then. I think the perspective now where we live in a global market and getting back to electricity, it is a North American market that we fully participate in and North Americans have benefited from that. Enhanced transmission inter-

connection is just going to make it better for everyone in North America.

Mr. BURGESS. You know, in Texas we have been going through the Public Utilities Commission, which is a statewide effort, the competitive renewable energy zones and the siting of power lines. I know this because they have come west to east through the 26th Congressional District and had to deal with the people who were affected by the siting of those lines. But it is extremely important to be able to get the energy from where it is produced to where the people want it. And in Texas, people don't live in West Texas because it is so windy. It makes it a good place to produce wind energy, but the people actually live further to the east and the transmission lines were necessary to do that.

Ms. Hutzler, did you have an opinion about the Canadian efforts to restrict their markets?

Ms. HUTZLER. Well, obviously, it would not help their economy to do that, but it would also be a problem to us. I mean, we have States that get 100 percent of the natural gas from Canada such as Vermont. Other Northeastern States also get quite a bit of natural gas.

Mr. BURGESS. Can you relay to the good people of Vermont that the people of Texas will be happy to sell their natural gas to the people of Vermont?

Ms. HUTZLER. Well——

Mr. BURGESS. We will sell it at a very good price, very competitive price.

Ms. HUTZLER. Well, I think some of the New England States would like to even capitalize on natural gas from Pennsylvania but they don't have the infrastructure to do so, so that is a problem. You would have to make sure you get the infrastructure there and they would probably be happy to buy it.

Mr. BURGESS. So the existing infrastructure from Canada to Vermont actually facilitates that sale?

Ms. HUTZLER. Exactly.

Mr. BURGESS. And therein would be the difficult with trying to shut it in to Canada, keep the price low for their consumers. In fact, it would be a commodity that was not delivered to the market and would have a negative impact on their overall economy?

Ms. HUTZLER. Right.

Mr. BURGESS. The two terms that I sat on the Joint Economic Committee and we would perceive the unemployment numbers every month, on the first Friday of every month, and the manufacturing sector was always one of the brief bright spots in an otherwise dreary report through 2009, 2010, 2011, 2012. And of course I couldn't help but note that my home State of Texas was a leader in those manufacturing jobs. And, Mr. Mills, as you point out, those manufacturing jobs in fact were in the energy sector, so much so that North Texas, which has the Barnett Shale, which is natural gas producing geologic formation, almost didn't even notice the recession for the first year because the economy was still so robust as a consequence of developing and marketing our existing energy resources.

Mr. Kyles, let me ask you a question. It seems almost like there is a religious belief that if you somehow kill the Keystone XL pipe-

line, that will prevent any of the oil being sold out of the oil sands from Canada. But that is not really correct, is it?

Mr. KYLES. No, it is not. The applications that Plains has pending, for example, are existing pipelines. And so at this point there is always the possibility that an asset, not to suggest that Plains' assets would be dedicated for that purpose because that is not our intention. But there is always the possibility that other assets owned by other operators could be bought and sold, cobbled together so that they could be utilized for the purpose of transporting tar sands. So of course there would be a regulatory process and review that would be associated with it, but it does not categorically prevent——

Mr. BURGESS. Well, and there are other methods of transport besides pipelines. There are rail cars and trucks——

Mr. KYLES. Well, there are trucks and there is significant rail.

Mr. BURGESS. Yes, and then of course as we saw in Montreal there are some hazards from real transport of crude oil——

Mr. KYLES. That is correct.

Mr. BURGESS [continuing]. When a train broke loose and hit the town.

Thank you, Mr. Chairman. You are very indulgent. I will yield back my time.

Mr. SCALISE. The gentleman from Texas yields back.

Now, we will go to the chairman emeritus of the full committee, the gentleman from Michigan, Mr. Dingell.

Mr. DINGELL. Thank you, Mr. Chairman. And I appreciate you holding this hearing. I also want to express my affection for the two authors, my dear friend Mr. Upton and Mr. Green. And I want to observe that I hope that we will be able to perfect this legislation which appears to have some modest problems.

I want to make clear I am a supporter of the Keystone XL pipeline and I recognize that there have been extraordinarily long delays in the system we currently have. Meddling by the Congress, I would note, has also muddied the water. I believe that the reforms needed to be made can be made and I hope they can be done so in a bipartisan manner.

However, I have concerns about the bill as written and I hope that the changes can be made to ensure proper diligence is given to protect the public interests and our tremendous natural resources and that we can do this by using the review processes that are now in the law wisely and not by eliminating the NEPA environmental review process from the cross-boundary permit or from other things which appear to be important because what may be necessary for the situation on the Keystone pipeline may be quite different in other matters and may lead to some very significant regrets if we go the wrong direction. So I would like to see that we preserve an intelligent and reasonably expeditious review process.

Now, this question to Mr. Blackburn. And, Mr. Blackburn, I think it will be a yes or a no. In your testimony you said if this bill were in effect for the Keystone XL pipeline project that only the State of Montana has an environmental review process. Would the Montana environmental review have been required to examine the pipeline siting over aquifers, wetlands, rivers, and other sensitive areas in other States?

Mr. BLACKBURN. No, Representative.

Mr. DINGELL. Thank you. I happen to have the privilege to live in the Great Lakes region, home for some 20 percent of the world's freshwater supply, as well as a tremendous resource for hunting, fishing, recreational use, for industrial and transportation. Now, not too long ago we had a serious problem with an oil pipeline leaking approximately a million gallons into the Kalamazoo River. My concern is what would have happened had this pipeline been crossing the Detroit River, the St. Clair River, or some of the waters in the Great Lakes? If a pipeline were to leak oil into one of these rivers, it would flow into St. Clair down the Detroit River, past my district into Lake Erie. All the way the spill would affect vast private areas and State and Federal lands of Michigan, possibly Ohio, Canada, and the rest of the Great Lakes basin.

Now, Mr. Kyles, this question to you. Your company operates pipelines across the St. Clair and Detroit Rivers. If you were to build a new liquefied petroleum gas pipeline under either of these rivers and this bill were in effect, would a Federal NEPA review for that pipeline be required? Please answer yes or no.

Mr. KYLES. Yes, it would be required but——

Mr. DINGELL. NEPA would be required if this bill were in effect?

Mr. KYLES [continuing]. Not under this bill.

Mr. DINGELL. I am sorry?

Mr. KYLES. Not according to this bill.

Mr. DINGELL. OK. If this bill——

Mr. KYLES. And let me——

Mr. DINGELL. Please.

Mr. KYLES. Sure.

Mr. DINGELL. I would be very grateful if you would respond to my questions. All right. The question is if this bill were in effect and you were to build a new pipeline under the St. Clair or the Detroit Rivers, would a NEPA review for that pipeline be required? The answer to that question——

Mr. KYLES. Yes.

Mr. DINGELL [continuing]. Is no, is it not?

Mr. KYLES. Yes, it would be required.

Mr. DINGELL. It would be?

Mr. KYLES. Yes.

Mr. DINGELL. You seem to have an interesting reading process, because I read it quite differently. My point here is that we never know what is going to happen when an oil pipeline leaks or a natural gas pipeline explodes. We don't know what rivers, lakes, or aquifers it might affect. We tried letting each individual State deal with these issues before and it never worked. That is why I wrote the National Environmental Policy Act, which simply requires that people proposing these types of projects look before they leap. We want them to know where they are going to come down and where we are going to come down. And we want them to tell us what the project will do in an open, transparent process in which the people are brought into it. And I hope that my colleagues will take the time that is necessary to consider what this bill might do to sensitive areas like the Great Lakes.

There is tremendous opposition to drilling in the Great Lakes but we are going to allow pipelines without any review or protection to

move under them, and I find this to be a source of great concern and danger. And I am worried that we are ignoring important values in eliminating the review process. I am fully well prepared to support the pipeline. I am also fully well prepared to support modifications where necessary to make it possible to build the pipeline or to see to it that the review processes are adequate, but I am sure not going to throw the baby out with the bathwater and leave us in a situation where we have jeopardized the Great Lakes and the precious resources that they are to this country.

Thank you, Mr. Chairman.

Mr. BURGESS [presiding]. The gentleman's time is expired.

The Chair now recognizes the gentleman from Texas, Mr. Green, 5 minutes for your questions, please.

Mr. GREEN. Thank you, Mr. Chairman.

And following our chairman emeritus, I would hope if there was a pipeline under any river, that we are not waiving the Clean Water Act in this legislation and whether it is under the rivers in Michigan or the lakes. But let me get to my questions.

Mr. Kyles, when it comes to actually siting and constructing a project, what impact would this legislation have on the environmental permitting at the State and Federal level?

Mr. KYLES. It would have no impact with respect to the States or other existing Federal agencies that are involved in environmental review. The only issue that is the focus of our attention today is the cross-border aspect and it does not eliminate regulatory review for environmental purposes beyond that.

Mr. GREEN. OK. I know, for example, and I am not familiar with the Northeast or Northwest, but I know we have Rio Grande River between Texas and Mexico and we have those same concerns about, you know, pipelines going across them. And they have environment reviews based on both Federal law, but I know we have the Texas Railroad Commission regulates our pipelines.

Mr. KYLES. That is correct.

Mr. GREEN. And that is a State agency that has regulation. It is not just Montana. In fact, I would hope that every State agency, including my State, would have regulation over pipeline permitting in their States, including Vermont.

Mr. Burpee, FERC and the National Energy Board of Canada signed a memorandum of understanding for increased efficiency, expedition, and action on cross-border energy issues. In your opinion, how would this legislation build on that foundation?

Mr. BURPEE. I would say the direction here is to reduce redundancy, have a common view, and just move forward quickly. The Canadian process is a lot faster than all the U.S. processes right now and they are still robust.

Mr. GREEN. OK. You mentioned that the expansion of international power lines would support the development of clean nonemitting energy sources, including projects located in the United States. Can you elaborate further on how U.S. renewable projects benefit from the construction of transmission connections with Canada and why is cross-border infrastructure essential in maximizing North American clean energy potential?

Mr. BURPEE. Within Canada, there is a large amount of large hydro storage. There is a lot of wind being developed in both Can-

ada and the U.S. The marriage of large hydro for storage and wind is ideal. Anything that is non-dispatchable or intermittent needs some form of storage. The cheapest, most efficient form of storage is large storage hydro, so they fit. As the systems evolve and we move away from carbon, they work together very well. And you look at what Manitoba Hydro and Minnesota Power I believe it is are looking at now in terms of longer-term deals and how the systems work together, we also have great river energy and Minnesota announced seasonal diversity deal with Manitoba Hydro taking into account the different seasonal requirements of the grid and how they work together. So it promotes economic efficiency considerably.

And on the Northeast side, the availability of more hydro development actually offers fuel diversity off of gas into the Northeast U.S.

Mr. GREEN. OK. And I know in Texas we do things other than just natural gas and oil. We are probably the leading State for wind power. Now, all the wind power generation we are going to use obviously on our metropolitan areas, but somewhere along the way we may need to expand that and sell electricity in New Mexico, particularly northern New Mexico. So this would benefit the same situation was the Canadian border and the Mexican border.

Mr. Kyles, how long has the State Department taken to approve your presidential permit to reflect the change in ownership of the pipeline?

Mr. KYLES. We are still waiting for approvals—

Mr. GREEN. How long has it been?

Mr. KYLES [continuing]. With respect to the name change, but we have had applications under consideration for 2 years.

Mr. GREEN. OK. If that was just a U.S. pipeline, I would assume you would just go to FERC for a change in ownership.

Mr. KYLES. Yes, that is correct.

Mr. GREEN. OK. What is the time limit for FERC?

Mr. KYLES. Well, just a moment. These are crude oil pipelines so——

Mr. GREEN. OK. OK. So it is not the FERC. OK. But if it was natural gas permitting, OK.

Mr. KYLES. Right.

Mr. GREEN. Is this type of delay for a project that has already been built unique only to the Plains All American Pipeline?

Mr. KYLES. No, we have researched and there are other operators of pipelines who are in the same circumstance.

Mr. GREEN. You previously stated that FERC is not equipped to make certain decisions. Do you believe those in the State Department are properly equipped to make timely decisions on issues related to this bill?

Mr. KYLES. No. And that is because there is an unnecessary level of review and there is no transparency. There is no predictability. There are no timelines. There is a public notice that provides the opportunity to file an application for a name change permit for an existing pipeline that may already be operating, but nonetheless, no one knows exactly what completion of the name change is going to entail.

Mr. GREEN. Thank you. Mr. Chairman, I know I am out of time. I appreciate your patience. I thank our witnesses, all our witnesses.

Mr. GARDNER [presiding]. The gentleman from Texas yields back. The Chair recognizes himself for 5 minutes.

And I just wanted to talk about what is happening in my State as a result of the possibility that we have transnational, international pipeline activity construction taking place. It was a year ago when I toured a company my district that actually makes bird strike detectors. They make bird strike detectors. They detect wind shear, those kinds of things. In a conversation that we had, we were talking about who their number one customer was. And they asked if I could guess who their number one customer was. And I said, well, is it the Department of Defense? Is it the Denver International Airport? And they said, no, it is actually in Alberta with the oil sands because of the equipment that we make that they use in Canada. And they talked about the number of jobs that we have created in Colorado because of that one specific project. A report that we had from one of the universities talked about the thousands of jobs that could be created in Colorado because of pipelines that came in from Canada into the United States.

And that kind of opportunity is something that we can't take lightly. In a time of high unemployment when people are looking to put food on their table, when people are looking to try to make ends meet, create good quality jobs, that is an incredible opportunity for this country. And so any process that takes too long, is too cumbersome to develop, to construct, to make these kinds of jobs, I think we have an obligation as Congress to figure out how to make it work better. And that is why I commend Chairman Upton and Chairman Whitfield for holding this hearing to talk about ways that we can move forward on job creation and job creation activities in this country.

And so the legislation that we have today is again highlighting what we have done to break down barriers to job growth and to energy production. It is a bill that would clarify and modernize the approval process for construction, as you have talked about throughout the State.

In late summer this year the independent U.S. Energy Information Administration released a statistic that for straight months our production in the United States has actually exceeded the production in Saudi Arabia. And we need more bills, more policies like this today to ensure that the United States continues down this path of economic growth. And so if we talk about agencies, entities, groups like the Environmental Appeals Board, they are infamous for sitting on several permit applications and creating problems within the administration leading to uncertainty, leading to permit uncertainty. And in your testimony, Mr. Burpee, you talk about the uncertainty for projects under the current process specifically with presidential permits. Could you again talk a little bit more about how we can streamline this process?

Mr. BURPEE. The observation I have is that what we are getting done with full environmental review, public stakeholder involvement on the Canadian side can be done in a year, 12 to 15 months. We wait for presidential permit for an average of 2–1/2 or more years. We have a similar example of basically an ownership

change, which was a name change between two crown corporations in B.C. that took 2–1/2 years to get a new presidential permit for a 7–1/2 mile section of transmission line underwater that crosses U.S. territory waters going from south of Vancouver to Vancouver Island. And the Canadian equivalent was 7 months, 3 pages application on the Canadian side, 62 pages on the American side.

Mr. GARDNER. And perhaps you addressed this in prior comments but what markets would open up to the U.S. that we don't currently serve?

Mr. BURPEE. Well, from an electricity perspective there are right now proposals for increased interconnection, transmission interconnection in the U.S. Northeast into Quebec and eventually into the rest of the Maritimes as well, Midwest into the Ontario markets, basically all the existing markets including B.C. There are a number of proposals to increase—there are significant low-carbon supplies of electricity within Canada and there is a lot more waiting to be built and operated and lower the carbon intensity of the entire North American economy actually.

Mr. GARDNER. I thank you. And I thank the witnesses for your testimony today. And with that the Chair recognizes the gentlelady from Florida, Ms. Castor, for 5 minutes.

Ms. CASTOR. Thank you very much, and thank you to the panel for being here today.

You all I believe were all in attendance during Jeff Wright's testimony. He is the director of energy projects for the Federal Energy Regulatory Commission. He was on the first panel. He provided important testimony regarding FERC's area of responsibility. For interstate natural gas pipelines the Natural Gas Act governs the permitting process. Under existing law there is a Federal environmental review and public comment for any interstate natural gas pipeline, even the ones that don't cross the border with Canada or Mexico. But this highlights what Mr. Blackburn opened his testimony with. We are dealing with different things. This bill is dealing with natural gas pipelines, oil pipelines, and electric transmission lines. And that is problematic.

Mr. Blackburn, is there a comprehensive Federal permitting law for oil pipelines like there is for natural gas pipelines?

Mr. BLACKBURN. No, there is not. And I would also add that Canada does have one and it is amazing what they do in terms of their statistical analysis and their——

Ms. CASTOR. So that is one of the reasons this bill is problematic. So the presidential permit requirement is the only Federal requirement that guarantees an environmental review for cross-border oil pipelines, is that correct?

Mr. BLACKBURN. That is correct. There are other laws but most of them actually may make no difference to a particular pipeline.

Ms. CASTOR. And this bill eliminates the presidential permit requirement in the Federal environment review for the cross-border oil pipelines, is that correct?

Mr. BLACKBURN. In many circumstances it would.

Ms. CASTOR. So, Mr. Blackburn, then could you respond to the claim that other Federal environmental laws besides NEPA will ensure that environmental concerns are taken into consideration before the pipelines are approved and constructed?

Mr. BLACKBURN. Sure. Thank you. For example, for the Alberta Clipper pipeline, it is an expansion of an existing pipeline which includes just pump station additions. The steel is already in the ground. Because of the limited actual footprint change for the pipeline itself, it is not clear what Federal laws—they are in existence but it is not clear that they will necessarily apply to this particular project. The only law that I am aware of, the only requirement that I am aware of that would absolutely require an environmental impact statement is the presidential permit process at this point.

Ms. CASTOR. OK. And, Mr. Mears, you deal with these issues coming from Vermont. As a State regulator, as a practical matter, without the presidential permit for the cross-border oil pipelines, will States be able to evaluate all of the concerns that are currently considered as part of the public interest determination of a presidential permit?

Mr. MEARS. No, they absolutely would not be able to. And there is a particular challenge with long linear projects whether electricity generation or a long oil pipeline or natural gas pipeline. They may touch upon a variety of different jurisdictions and authorities, clean water, clean air, wetlands, and so forth, as Mr. Green from Texas pointed out, but none of those laws would get at the fundamental issue of whether that pipeline is necessary, whether there are less impactful alternatives. There is a whole variety of things that will not be assessed in the absence of the current system.

Ms. CASTOR. And you are speaking as a State regulator for the information the State would need, and I imagine that is the same for citizens in the area or other businesses in the area, is that correct?

Mr. MEARS. That is correct.

Ms. CASTOR. So, Mr. Blackburn, what is your view of the ability of States to substitute for the Federal review?

Mr. BLACKBURN. States' power really is limited because for interstate pipelines, which most of these are, they, for example, in a new pipeline can't determine route to affect another State. They can't affect the route in another State even if it would be beneficial to theirs to have the border crossing with another State in a different location. And in general the States are not in a position to determine national interest much less national security interests, and because of that limitation that States have limited geographic jurisdictions, they simply are not in a position to fully assess the environmental impacts or the national interest impacts.

Ms. CASTOR. So if this bill were to pass and the ability of the public to participate, the ability of States to understand all of the consequences, the lack of consideration of alternatives and mitigation, do you think there is a greater risk for litigation and could this lead to greater delays than we have under the current law?

Mr. BLACKBURN. I believe that there is a greater risk of litigation, but I also believe there is a greater risk, for example, of citizen action of the legislature and other kinds of citizen actions that could delay the project. The clearer a process is and the fairer it is, the more citizens respect the outcome.

Ms. CASTOR. Thank you very much.

Mr. GARDNER. The gentlelady's time is expired.

At this point the Chair would enter into the record several letters for the record of support for the legislation.

[The information follows:]

Charles T. Drevna
President

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October 29, 2013

The Honorable Fred Upton
Chairman, House Energy and Commerce Committee
2183 Rayburn House Office Building
Washington, DC 20515

The Honorable Gene Green
Member of Congress
2470 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Upton and Congressman Green:

The American Fuel & Petrochemical Manufacturers (AFPM) writes in support of H.R. 3301, the "North American Energy Infrastructure Act." The United States and our North American allies have the opportunity to become energy secure in the next decade, provided overly burdensome governmental red-tape does not get in the way. The North American Energy Infrastructure Act provides much needed modernization and certainty to pipeline approvals, and will ensure businesses continue to grow and invest while enhancing our national security.

As you know, the United States is in the midst of an energy revolution that has already put us on track to become the world's leading oil and natural gas producer. With this newfound abundance comes economic growth and hundreds of thousands of new jobs in oil and gas production, refining, and other manufacturing sectors. The nation's refineries and petrochemical facilities are among the most advanced in the world and now have an opportunity to continue supplying not only our U.S. needs, but also to reduce the U.S. trade deficit. Coupled with new supplies from our neighbors in Canada and Mexico, North American energy security is within our grasp. This evolving and important geo-political strategic advantage will help reshape our economy and foreign relations for decades to come. As our energy supplies grow, however, so does the need for safe and reliable infrastructure.

Unfortunately, cross-border pipeline approval is currently subject to an outdated patchwork of executive orders and statutes. This process is political, uncertain, and lengthy—which chills investment and ultimately increases the strain on other forms of transportation, such as railroads and trucking. By streamlining and modernizing the permitting process, the North American Energy Infrastructure Act will help U.S. manufacturers and energy producers continue growing, creating jobs, enhancing national security, and providing consumers with lower cost energy.

AFPM appreciates your continuing leadership on energy issues and urges Congress to support this common sense legislation.

Sincerely,

Charles T. Drevna

Kyle B. Isakower
Vice President, Regulatory and Economic Policy

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October 29, 2013

The Honorable Fred Upton
Chairman
House Committee on Energy and Commerce
United States House of Representatives
Washington, DC 20515

The Honorable Gene Green
United States House of Representatives
Washington, DC 20515

Dear Chairman Upton and Representative Green,

On behalf of the American Petroleum Institute, I write today to express support for HR 3301, "North American Energy Infrastructure Act". API welcomes your legislation which promotes North American energy security by removing permitting roadblocks and implementing a fair, standardized approval process for energy projects that cross U.S. borders.

At a time of economic distress, the U.S. oil and natural gas industry has the potential to grow the economy, create well-paying jobs, and generate millions of dollars in new federal revenue. An efficient permitting process is vitally important to sustaining our industry, which supports more than 9.8 million jobs and delivers more than $85 million per day to the federal government through taxes, bonus bids, royalties, and other production fees.

Encouraging investment in U.S. energy infrastructure and bringing certainty to our cross-border infrastructure permitting process would help promote North American energy security goals and increase access to stable resources. While the U.S is expanding the use of its own domestic resources, imports and trade will continue to play a key role in meeting consumer demand. Increasing supplies from friendly, trusted and nearby neighbors will help reduce U.S. reliance on resources from unstable areas of the world.

API would like to thank the sponsors of the "North American Energy Infrastructure Act" and express our support of the Committee's continued efforts to move legislation that facilitates North American infrastructure expansion.

Sincerely,

Kyle B. Isakower

Cc: House Committee on Energy and Commerce Members

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October 28, 2013

The Honorable Fred Upton
Chairman
House Committee on Energy & Commerce
2183 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Gene Green
Member of Congress
2470 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Upton and Congressman Green:

On behalf of the American Transmission Company (ATC), I am writing you today to congratulate you on the introduction of H.R. 3301, the "North American Energy Infrastructure Act," and offer our company's endorsement of this legislation.

ATC is a Wisconsin-based utility that owns, operates, builds and maintains the high-voltage electric transmission system serving portions of the Upper Midwest. Formed in 2001 as the nation's first multi-state transmission-only utility, ATC has invested $2.8 billion to improve the adequacy and reliability of its infrastructure. ATC now is a $3.3 billion company with 9,480 miles of transmission lines and 529 substations. The company is a member of the MISO regional transmission organization, and provides nondiscriminatory service to all customers, supporting effective competition in energy markets without favoring any market participant.

ATC believes that any legislation that would clarify and modernize the electric transmission siting process in a way that will increase grid reliability and enhance domestic energy security is a worthwhile legislative goal. We believe that H.R. 3301 meets this goal and encourage your Committee and this Congress to pass this bill.

Sincerely,

Thomas Finco
Vice President – External Affairs

Cc: U.S. House of Representatives Committee on Energy and Commerce
Energy and Power Subcommittee

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

R. BRUCE JOSTEN
EXECUTIVE VICE PRESIDENT
GOVERNMENT AFFAIRS

1615 H STREET, N.W.
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October 28, 2013

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

The Honorable Gene Green
U.S. House of Representatives
Washington, DC 20515

The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations, and dedicated to promoting, protecting, and defending America's free enterprise system, commends Chairman Upton and Representative Green for crafting H.R. 3301, the "North American Energy Infrastructure Act." The bill would reform the regulatory process for approving energy infrastructure projects that cross U.S. borders in North America.

H.R. 3301 would streamline the approval process for the construction, connection, operation or maintenance of oil pipelines, natural gas pipelines, and electric transmission lines at the national boundary of the United States for the import or export of oil, natural gas, or electricity to or from Canada or Mexico. For example, the bill would:

- Consolidate and standardize the cross-border approval process for certain energy infrastructure projects by replacing and superseding the current processes that have been created through multiple Executive Orders;

- Instruct that all applications for cross-border oil pipelines be handled by the Department of Commerce, natural gas pipelines by the Federal Energy Regulatory Commission, and electric transmission lines by the Department of Energy; and

- Require agencies to approve cross-border applications within 120 days of submission unless they determine that the project is not in the national security interest of the United States.

Importantly, the bill would exempt just the cross-border decision from National Environmental Policy Act (NEPA) review, while preserving all applicable environmental review for the construction, connection, operation, or maintenance of the energy facility. As the Committee's summary states, H.R. 3301 "will not waive any environmental laws but will decouple the cross-border determination from the NEPA review process," and that "applicable environmental laws and permits would still be required but not for the purpose of determining whether a project should be allowed to cross the international borders of the U.S."

Greater clarity on this point as H.R. 3301 goes through the legislative process would make the bill even stronger. Specifically, Section 3(b)(3) of the bill could more explicitly state that the only decision being exempted from NEPA is the decision of whether to allow the energy infrastructure project to cross the borders of the U.S. within North America. The Chamber recommends that the text of the legislation more closely track the summary of the legislation released by the House Energy and Commerce Committee on this point.

The Chamber commends the efforts of Chairman Upton and Representative Green to bring attention to permit streamlining and regulatory reform generally. The federal regulatory process in our country is broken and in need of meaningful and comprehensive reform, in order to create jobs and strengthen our economy.

Sincerely,

R. Bruce Josten

cc: Members of the House Committee on Energy and Commerce

U.S. Senator Malcolm Wallop
(1933-2011)
Founder

George C. Landrith
President

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October 29, 2013

The Honorable Fred Upton, Chairman
Committee on Energy and Commerce
United States House of Representatives
Washington D.C. 20515

The Honorable Gene Green
Committee on Energy and Commerce
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Upton and Rep. Green:

We support the North American Energy Infrastructure Act and appreciate your efforts to bring fairness and transparency to the approval process for pipelines and electrical transmission lines that cross U.S. borders. The current system is far too ad hoc and is susceptible to far too many political games. In contrast, the North American Energy Infrastructure Act would create a clear, standardized and transparent approval process. This is something America desperately needs.

Energy is a key and basic building block of a strong and growing economy and to job and income growth. This is something all Americans want and hope to return to. Reliable and affordable energy is also a strong factor in national security considerations. Reform that removes autocratic and burdensome barriers and moves us towards attaining the goal of North American energy independence is welcome news. The rule of law is important to our organization and members and we see the implementation of fair and standardized approval processes for cross-border energy projects as a very positive development.

Our current system seems to favor never-ending delays and perpetual studies. The requirement that review decisions be made within reasonable time frames is critically important as our current system allows bureaucrats to study projects to death without ever making any serious attempt to come to a conclusion. This new process would bring certainty, transparency and predictability while maintaining important environmental protections and ensuring that the environment is protected. This is a win-win for America -- a clean environment and a strong economy.

This law will help our economy grow and stop us from sending our energy dollars to far away governments that are either unreliable or unfriendly to our national interests. Likewise, because it maintains environmental protections, no one can fairly or accurately argue that this law would harm the environment. Many of our members live in rural areas and are careful stewards of the land. They are mindful of the importance of clear air, water and land as many make their living by wise management of these resources. Their support for this law could not be stronger because they realize it strikes an excellent balance that protects the environment while strengthening both our economy and our national security interests.

We strongly recommend this legislation be passed out of committee with a favorable vote. We hope the House and Senate will pass it overwhelmingly and that the President will sign it. This is a timely and much needed piece of legislation that should be entirely bi-partisan as it is in every American's interest to have a strong economy fueled by affordable and reliable North American energy while at the same time maintaining needed environmental standards.

Thus, we wholeheartedly and enthusiastically support the North American Energy Infrastructure Act. We are happy to answer any questions you or your staff may have.

Sincerely,

George Landrith

George Landrith

DONALD F. SANTA
PRESIDENT & CEO

October 28, 2013

The Honorable Ed Whitfield
Chairman
Subcommittee on Energy and Power
Committee on Energy and Commerce
Washington, DC 20515

The Honorable Bobby Rush
Ranking Member
Subcommittee on Energy and Power
Committee on Energy and Commerce
Washington, DC 20515

Dear Chairman Whitfield and Ranking Member Rush,

The Interstate Natural Gas Association of America (INGAA) is writing to express its support for H.R. 3301, the North America Energy Infrastructure Act. INGAA represents interstate natural gas pipeline operators in the U.S. and Canada. Our 25 members operate about 200,000 miles of U.S. natural gas transmission pipeline and account for virtually all of the major natural gas pipeline systems in North America.

The United States is a partner with Canada and Mexico in the North American Free Trade Agreement. This agreement has served our nation well, as reflected in the robust and dynamic cross-border trade of natural gas. The U.S has benefited from abundant Canadian supplies of natural gas over the past several decades, and we have exported modest volumes of U.S. natural gas to Mexico. The laws governing the approval of cross-border energy infrastructure should be updated to reflect the free trade arrangement we have shared with these nations since 1994. For this reason, INGAA supports H.R. 3301, and appreciates the efforts of Chairman Upton and Congressman Green in drafting this legislation.

The current process for the approval of cross-border natural gas pipelines is complex and needs reform. Three major approvals are required to complete a cross-border pipeline crossing:

1) Approval of the import/export transaction by the Department of Energy (DOE) under section 3 of the Natural Gas Act (NGA).
2) Approval of a natural gas import/export facility by the Federal Energy Regulatory Commission (FERC) under section 3 of the NGA, jointly with FERC's delegated authority under Executive Orders 10485 and 12038 to approve a Presidential permit for such facility. The NGA section 3 authorization and the Presidential permit are essentially reviewed together by FERC.
3) A certificate of public convenience and necessity authorizing construction of the pipeline issued by FERC, pursuant to section 7 of the NGA. Incidentally, since the FERC certificate is a "major Federal action" under the National Environmental Policy Act (NEPA), FERC is responsible for conducting the appropriate environmental analysis to meet NEPA requirements.

In addition to these approvals, a proposed pipeline also must obtain numerous environmental and land-use permits required for any such projects, including permits related to the Clean Water Act and the Clean Air Act.

Section 3 of the NGA creates a rebuttable presumption that the import/export of natural gas is in the public interest. Section 3(a) states that FERC (and by extension, DOE) "shall issue such order upon application, unless, after opportunity for hearing, it finds that the proposed exportation or importation will not be consistent with the public interest." The burden of proof is placed upon those who assert that the import/export is not in the public interest.

Importantly, section 3(c) of the NGA makes specific reference to the approval of import and exports with free trade agreement nations, such as Canada and Mexico. Section 3(c) states that the import/export of natural gas to free trade agreement nations "shall be deemed to be consistent with the public interest, and applications for such importation or exportation shall be granted without modification or delay." In other words, a determination of public interest, in these cases, is made by operation of law. A governmental entity need not make such a determination, since Congress already has spoken on the question.

For many years, FERC's predecessor agency (the Federal Power Commission) had the exclusive authority to approve the import/export of natural gas. In 1953, President Eisenhower signed Executive Order 10485, which established a process for the executive branch approval such facilities. The order stated that the "(p)roper conduct of the foreign relations of the United States requires that executive permission be obtained for the construction and maintenance at the borders of the United States of facilities for the exportation or importation of electric energy and natural gas." This executive authority was delegated to FERC and DOE in the late 1970s, with the enactment of the Department of Energy Organization Act of 1977 and President Carter's Executive Order 12038.

H.R. 3301 would modernize approvals for natural gas pipeline projects crossing U.S. borders into either Canada or Mexico, such that three approvals would become two. If the bill were enacted, a proposed natural gas pipeline crossing the border with one of these nations would require:

1) The same certificate of public convenience and necessity issued by FERC under current law. This includes the associated NEPA analysis, and all environmental and land-use permits.
2) A separate FERC approval for both the NGA section 3 authorization and the authorization required under section 3 of H.R. 3301, which would replace the current Presidential permit requirement.

Section 4 of H.R. 3301 would remove the redundant requirement that DOE approve the import/export of natural gas to/from Canada and Mexico. This section of the legislation amends section 3(c) of the NGA, which already renders DOE's review of the import/export of natural gas to a free trade agreement nation (such as Canada or Mexico) a largely irrelevant exercise.

The Department of Energy seems to agree that its specific approval of these transactions serves little purpose. In a statement before the Senate Energy and Natural Resources Committee in 2011, DOE Acting Assistant Secretary for Fossil Energy Christopher Smith stated:

> *Because applications under section 3(c) must be granted without modification or delay and are deemed to be in the public interest, DOE does not conduct a public interest analysis of those applications and cannot condition them by the insertion of terms which otherwise might be considered necessary or appropriate.*

Thus, there seems little justification for a DOE process that is perfunctory at best. Pursuant to H.R. 3301, FERC "shall approve" an import/export application unless such approval is "not in the national security interests of the United States." The guidance provided by the Natural Gas Act and by H.R. 3301, if enacted, provides FERC with clear standards for protecting legitimate national security concerns, while remaining consistent with the purposes of existing free trade agreements.

Some have alleged that section 4 of H.R. 3301 changes the approval process for liquefied natural gas (LNG) exports. This clearly is not the case, as is evidenced by the plain language of the bill itself. H.R. 3301 addresses the approval of *natural gas pipelines crossing the international borders with either Canada or Mexico.*

The United States has a free trade agreement with Canada and Mexico that has been in place for 20 years. Energy infrastructure between these three NAFTA signatories should be approved and constructed in a manner consistent with the fact that such a free trade agreement actually exists. H.R. 3301 accomplishes this objective.

Once again, INGAA thanks Chairman Upton and Congressman Green for introducing this legislation. We respectfully request that this letter be made part of the record for the hearing concerning H.R. 3301. INGAA would be happy to answer any questions the Subcommittee may have.

Respectfully,

Donald F. Santa
President and CEO

cc: Hon. Fred Upton
Hon. Gene Green

NCA II
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Executive Vice President

UNITED BROTHERHOOD of CARPENTERS & JOINERS of AMERICA
Douglas J. McCarron
General President

INTERNATIONAL UNION of OPERATING ENGINEERS
James T. Callahan
General President

NATIONAL CONSTRUCTION ALLIANCE II

HEADQUARTERS: 1634 Eye Street NW, Suite 805 • Washington, DC 20006 • 202-239-4779

September 30, 2013

The Honorable Gene Green
2470 Rayburn House Office Building
Washington, DC 20510

Dear Congressman Green:

The National Construction Alliance II supports your transboundary permitting legislation for energy infrastructure. We sincerely appreciate your effort to bring some rationality and clarity to the permit processes for energy-infrastructure projects that cross the border with Canada and Mexico. Thank you for your leadership and thoughtfulness on this critical issue.

The National Construction Alliance II – a partnership between two of the nation's largest construction unions, the International Union of Operating Engineers and the United Brotherhood of Carpenters and Joiners of America – represents nearly one-million workers, many of whom build the nation's energy infrastructure.

Bringing certainty to the permitting process for cross-border projects is essential as the continent more closely integrates its energy supplies. The growth in natural gas development alone justifies congressional involvement to clarify the permit process for pipelines that move this valuable commodity between countries. Doubt and confusion constrain investment in the nation's energy infrastructure, weakening the economy, job growth, and tax revenue. That confusion that could be rectified by your legislation, which is designed to do the following:

- Implement a fair and standardized approval process for oil pipelines, natural gas pipelines and electric transmission lines that cross U.S. borders.
- Eliminate the legal uncertainty for this federal permit authority, which relies solely on broad constitutional authority and multiple Executive Orders.
- Bring certainty to the federal regulatory process for modifications and changes in ownership to existing projects.
- Institute a policy that provides a rebuttable presumption in favor of approving oil and natural gas pipelines and electric transmission lines that would cross U.S. borders.

The National Construction Alliance II looks forward to working with you and the bipartisan cosponsors of the bill to enact this legislation into law in the 113th Congress.

Thank you again for your leadership on this vital legislation.

Sincerely,

Raymond J. Poupore
Executive Vice President

REGIONAL OFFICE: 100 East Corson Street, Suite 230 • Pasadena, CA 91103 • 626-229-9975

October 23, 2013

The Honorable Fred Upton
United States House of Representatives
2183 Rayburn House Office Building
Washington, DC 20515

The Honorable Gene Green
United States House of Representatives
2470 Rayburn House Office Building
Washington, DC 20515

Dear Representatives Upton and Green:

On behalf of the 362,000-member National Taxpayers Union (NTU), I write in support of H.R. 3301, your North American Energy Infrastructure Act. This legislation would streamline the archaic cross-border permitting process for energy facilities that stretch across the borders we share with Mexico and Canada. These reforms would result in increased investment in our energy infrastructure, bringing with it much-needed jobs and consumer choice.

Under the current regulatory regime, proposed oil or natural gas pipelines and electrical transmission lines require a Presidential Permit, obtained via the Secretary of State and administered under a series of ad hoc Executive Orders. Projects can languish in regulatory limbo for years on end and the rules governing the process are far from clear, leading to disputes regarding modifications and permitting requirements. Indeed, as the permitting process for the Keystone XL pipeline drags on, it would appear that the rules can even change mid-stream. In general, markets function more efficiently with a reasonable degree of certainty, in order to anticipate where resources should be allocated. This is doubly true for the giant infrastructure projects H.R. 3301 addresses. The planning, personnel, and capital all depend on a transparent, predictable, and consistent regulatory environment.

As an August 16 report from the Congressional Research Service explains, the convoluted Presidential permitting process only exists in the vacuum of a lack of regulatory oversight on the part of Congress. The Constitution's Article 1, Section 8 clearly grants to Congress the authority to "regulate Commerce with foreign Nations." The North American Free Trade Agreement with Canada and Mexico also provides an incentive to remove obstacles that impede the free flow of energy and energy products with our neighbors.

H.R. 3301 would implement a consolidated and standardized approval process for all cross-border energy facilities. It does so by determining a specific agency to consider each type of project, setting a deadline of 120 days for approval, clarifying that existing projects do not require further approvals for simple modifications, and eliminating redundant requirements for natural gas pipelines. This modernized approach would help remove the costly regulatory hurdles that stand between consumers and low-cost energy options, spurring job-growth in an essential sector of our economy.

NTU is pleased to endorse the North American Energy Infrastructure Act; our members urge all Representatives to co-sponsor this legislation and work toward its enactment.

Sincerely,

Nan Swift

Nan Swift
Federal Affairs Manager

108 North Alfred Street ★ Alexandria, Virginia 22314 ★ Phone: (703) 683-5700 ★ Fax: (703) 683-5722 ★ Web: www.ntu.org

Mr. MCNERNEY. Mr. Chairman, I would like to ask unanimous consent to introduce three letters into the record.

Mr. GARDNER. The gentleman's request is recognized and entered into the record.

[The information follows:]

Alaska Wilderness League * Center for Biological Diversity * Clean Water Action * Defenders of Wildlife * Earthjustice * Environment America * League of Conservation Voters * Natural Resources Defense Council * Sheep Mountain Alliance * Sierra Club * Western Environmental Law Center * Wilderness Workshop

October 28, 2013

Dear Representative,

On behalf of our millions of members and supporters, we are writing to express our strong opposition to the "North American Energy Infrastructure Act" (H.R. 3301). This legislation is an effort to ram through permits for new cross-border oil and gas pipelines and electric transmission lines with virtually no review or public participation.

Under the bill, projects to import or export oil, gas or electricity across the Canadian or Mexican borders would have to be approved within 120 days unless the relevant official determines that the project "is not in the national security interests" of the U.S. This would exempt the projects from the National Environmental Policy Act, wiping out longstanding requirements that agencies determine whether such projects are actually needed and that provide the public with the right to comment and review alternatives. In addition, the bill eliminates pre-project reviews to determine if a project is actually in our national interest.

Large, complicated, risky projects like pipelines and transmission facilities are precisely the types of activities that ought to be well-planned and reviewed before they are built and consequently transfer public lands and resources in order to benefit foreign and private interests. Failure to do so not only results in threats to public safety, but can also harm our economy and environment.

Indeed, recent pipeline spills have underscored the need for thorough assessments before construction begins. For example, in 2010, a pipeline carrying tar sands oil burst and spilled over 1.1 million gallons of heavy crude into the Michigan's Kalamazoo River, costing over one billion dollars to date, forcing nearly 150 families to permanently relocate, shutting down local businesses, and adversely impacting the health of residents. Unfortunately, this is not an anomaly. Instead, the Pipeline and Hazardous Materials Safety Administration reports that there has been an average of 100 reported pipeline spills of over 50 barrels every year over the last ten years, spilling millions of gallons of hazardous liquids and costing billions in property damage.

With regard to electricity transmission, no compelling need for the provisions in this Act has been shown. Indeed, coordination between and among transmission permitting authorities already exists and has been steadily improving. Canadian transmission authorities participate in transmission planning activities with their American counterparts in both the Western and Eastern Interconnections. The provisions of this bill could result in poorly planned, unjustified, unnecessary and costly transmission projects

that American taxpayers would have to live with for generations. Finally, truncating environmental review and permitting processes to meet the arbitrary timeline of this bill disenfranchises communities that would be affected by the transmission.

Instead of improving responsible siting, construction and operation of oil and gas pipelines and electric transmission facilities, this bill goes in the opposite direction by forcing these projects through no matter what the costs may be. For these reasons, we urge you to oppose this bill.

Sincerely,

Kristen Miller
Legislative Director
Alaska Wilderness League

Bill Snape
Senior Counsel
Center for Biological Diversity

Lynn Thorp
National Campaigns Director
Clean Water Action

Marybeth Beetham
Director of Legislative Affairs
Defenders of Wildlife

Marty Hayden
VP Policy & Legislation
Earthjustice

Anna Aurilio
DC Director
Environment America

Tiernan Sittenfeld
Senior Vice President, Government Affairs
League of Conservation Voters

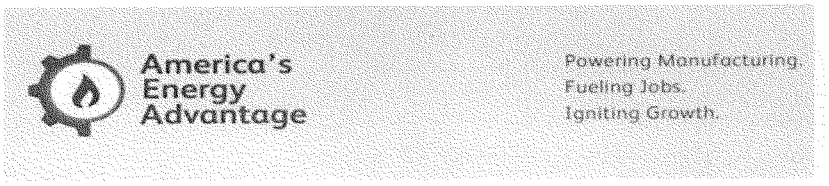
Scott Slesinger
Legislative Director
Natural Resources Defense Council

Hilary Cooper
Director
Sheep Mountain Alliance

Athan Manuel
Director, Lands Protection Program
Sierra Club

Erik Schlenker-Goodrich
Executive Director
Western Environmental Law Center

Will Roush
Conservation Advocate
Wilderness Workshop



October 23, 2013

The Honorable Ed Whitfield
Chairman,
Subcommittee on Energy and Power,
Committee on Energy and Commerce
US House of Representatives
Washington, DC 20515

The Honorable Bobby Rush
Ranking Member,
Subcommittee on Energy and Power,
Committee on Energy and Commerce
US House of Representatives
Washington, DC 20515

Dear Chairman Whitfield and Ranking Member Rush:

America's Energy Advantage, a coalition of energy-intensive manufacturers, cannot support the North American Energy Infrastructure Act. Section 4 of the legislation would effectively eliminate the public interest test and authorization requirement for some exports of natural gas, setting a bad precedent and potentially affecting the competitiveness of the U.S. manufacturing sector.

Under the Natural Gas Act, exports of natural gas require authorization from the Department of Energy (DOE), and authorizations must be based on DOE determinations that proposed exports are in the public interest. If the natural gas is bound for a country with which the United States has a free trade agreement, DOE presumes such exports are in the public interest. If not, this presumption does not exist and a separate determination must be made.

The legislation would change the law so DOE would no longer be required to issue an order to authorize the export or import of natural gas to or from Canada or Mexico.

The revised Section 4 would dispense with an important means of monitoring and managing LNG exports. Authorizations are effective means of implementing requirements, such as 1) disclosure and reporting requirements, 2) requirements that exporters be registered with DOE, which provides transparency regarding the exporting community, 3) bans on transshipment of exported natural gas to other countries and 4) bans on shipments to embargoed countries. Presently, these requirements are included in authorization orders and made conditions of exporting (including for exports to FTA countries). Section 4 of the draft bill would also undermine current U.S. trade negotiators, who currently have leverage based on the fact that our

trade partners are willing to make significant concessions to achieve the presumption of public interest.

For these reasons, we urge the Committee to remove Section 4 in its entirety.

We respectfully request that this letter be made part of the hearing record on the legislation.

Sincerely,

Jennifer Diggins
Chair, America's Energy Advantage

Industrial Energy Consumers of America
The Voice of the Industrial Energy Consumers

1155 15th Street, NW, Suite 500 • Washington, D.C. 20005
Telephone 202-223-1420 • Fax 202-530-0659 • www.ieca-us.org

October 28, 2013

The Honorable Ed Whitfield
Chairman
Subcommittee on Energy and Power
U.S. House of Representatives
Washington, DC 20515

The Honorable Bobby Rush
Ranking Member
Subcommittee on Energy and Power
U.S. House of Representatives
Washington, DC 20515

RE: H.R. 3301, "The North American Energy Infrastructure Act"

Dear Chairman Whitfield and Ranking Member Rush:

On behalf of the Industrial Energy Consumers of America (IECA), while we applaud the stated purpose of the legislation, that is, to create a modern and efficient cross-border approval process, Section 4 is a solution looking for a problem and should be removed. Section 4 has far reaching negative implications for domestic consumers, manufacturing competitiveness, and national security. Section 4 eliminates important DOE authorization, oversight, and the ability to condition LNG exports between the U.S., Canada and Mexico, all of which is sound public policy. We urge you to consider that LNG exports increase potential risks to domestic consumers and the economy, and that DOE oversight is needed.

The reality is that there are no government barriers to approving LNG exports between the U.S., Canada, and Mexico, because they have free trade agreements. The Natural Gas Act is very clear that shipments of LNG to countries that have a free trade agreement with the U.S. are assumed to be in the "public interest." All requests of this type are automatically approved by the DOE.

Section 4 would remove government oversight of monitoring and managing LNG exports. DOE authorization and oversight include such things as:

- Bans on transshipment of exported LNG to countries that are prohibited to by law
- Bans on shipments to embargoed countries
- Requirements that exporters be registered with DOE, which provides transparency regarding the exporting community (i.e. are they U.S. companies, foreign companies or sovereign nations)
- Disclosure and reporting requirements

Without DOE authorization and conditioning capacity and oversight, the U.S. loses its ability to know who is shipping and to whom. Otherwise, shipments could be diverted while at sea to entities and/or countries with which the U.S. has banned for security reasons or other issues.

The federal role of providing oversight for purposes of protecting the interests of the U.S. and its consumers is more important now than ever before. LNG exports and their implications launch the U.S. into unchartered waters. Caution is needed. We urge you to remove Section 4.

Respectfully, we request that this letter be placed in the hearing record.

Sincerely,

Paul N. Cicio
President

cc: The Honorable Ernest Moniz, Ph.D., Secretary, U.S. Department of Energy

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The Industrial Energy Consumers of America is a nonpartisan association of leading manufacturing companies with $1.0 trillion in annual sales, over 1,500 facilities nationwide, and with more than 1.4 million employees worldwide. It is an organization created to promote the interests of manufacturing companies through advocacy and collaboration for which the availability, use and cost of energy, power or feedstock play a significant role in their ability to compete in domestic and world markets. IECA membership represents a diverse set of industries including: chemical, plastics, steel, iron ore, aluminum, paper, food processing, fertilizer, insulation, glass, industrial gases, pharmaceutical, brewing, and cement.

Mr. GARDNER. The gentleman from Texas, Mr. Olson, is recognized for 5 minutes.

Mr. OLSON. I thank the Chair. And welcome to our second panel. And while I enjoyed all of your comments, your opening statements, I would like then a Texas amen to the competency of Mr. Mills, you, Ms. Hutzler, and you my fellow Texan, Mr. Kyles. We are at a unique time for North American oil production. Few would have guessed that North Dakota or Alberta would be at the heart of American energy policy, but the energy of the world is changing. Heck, 10 years ago in my home State of Texas if you had said Eagle Ford, most people of Texas would have thought that Ford has built a new F–150 pickup truck with some patriotic theme, the Eagle Ford. But as we all know, that is a big new shale play in America today. This is great news for America, great for Texas, but it means that we are in need of new transportation infrastructure across our continent.

And my first question is for my fellow Texan, you, Mr. Kyles. When I watch approvals of energy imports and exports for the United States, I am frustrated. The timeline is slow and it seems that some groups always find a way to make it slower. I know no country has this perfect. However, I understand that Canada is updating their review process as we speak. That is welcome news but we need to act, too. And does lack of certainty for the energy industry make it harder to justify projects coming into the United States of America?

Mr. KYLES. Absolutely because unfortunately under this current regulatory scheme, there are no clear procedures, checklists, timelines, and there is no transparency. An operator of a pipeline does not know what their timeline horizons will be in order to complete the application process or exactly what factors would be considered. And currently, there is a duplication of review also with respect to the States, the various Federal agencies, and then on top of it with respect to cross-border transportation pipelines, there is Secretary of State.

Mr. OLSON. Yes, sir. And this bill would fix most of those problems, is that correct?

Mr. KYLES. That is correct.

Mr. OLSON. Without new pipelines, we are likely to rely heavily on rail, truck, and ships for transport of our petroleum products. What is the data on the safety of rail, trucks, and ships compared to pipelines moving crude oil? Any idea?

Mr. KYLES. Pipeline safety is premier with respect to transportation of crude oil and liquids. It does not compare with respect to when compared to rail and trucks.

Mr. OLSON. In general is a fair to say that a modern well-maintained pipeline is very unlikely to have a spill because it fails as opposed to some at the surface not doing the research and tapping the pipeline? Normally, it is human errors, is that correct?

Mr. KYLES. That is correct.

Mr. OLSON. And I know back in Houston, Texas, the corrosion industry is working very hard to make these pipelines last for longer and longer and longer to prevent some of the corrosion problems we are seeing across this country.

I have got a little bit of time here and my question is for you, Ms. Hutzler. At its core, this bill is about integrating North America. Our neighbors to the north and to the south are some of our best trading partners and our closest allies. Half of our southern border is on my home State of Texas. Our economies are heavily intertwined, perhaps now more than ever. With so much integration between us and with a new president in Mexico who seems very, very focused on getting Mexico in the 21st century, how are we hurting ourselves by building roadblocks to international energy trade with Mexico and Canada?

Ms. HUTZLER. As you mentioned, they are allies and it is very important for us to be able to be able to trade freely between the countries and also to have the infrastructure to do so, meaning we rely on natural gas coming from Canada to a great extent and it is very important for us to have the trade and the infrastructure to do so.

Mr. OLSON. Thank you to the witnesses.

Mr. GARDNER. The gentleman yields back.

The gentleman from New York is recognized for 5 minutes, Mr. Tonko.

Mr. TONKO. Thank you, Mr. Chair.

My first questions are to Mr. Mears and Mr. Blackburn. It has been pointed out that oil and gas can move across the border today by rail and by truck without any permits or decisions about whether oil and gas should go across the border and without a NEPA analysis. However, for new cross-border highway or rail line were proposed, would permits and NEPA review be required?

Mr. MEARS. Yes.

Mr. BLACKBURN. Yes.

Mr. TONKO. How about construction of a new port facility?

Mr. MEARS. In all likelihood, yes.

Mr. BLACKBURN. Yes.

Mr. TONKO. So do you view this legislation as addressing only the question of whether oil and gas can cross the border or is it about the construction of infrastructure to enable that transport?

Mr. BLACKBURN. Could you repeat the question, please? I want to make sure I understand.

Mr. TONKO. Sure. Do you view this legislation as addressing only the question of whether oil and gas can cross the border or is it about the construction of infrastructure to enable that transport?

Mr. BLACKBURN. I believe it is about both. The permits themselves allow construction but the question of national interest is about whether it is appropriate to bring the oil into the country for other kind of reasons.

Mr. TONKO. And Mr. Mears, is——

Mr. MEARS. I agree.

Mr. TONKO. OK. Thank you.

Environmental impact studies are viewed as primarily environmental reviews but they address a wide range of issues beyond potential impacts to natural resources. Do projects in communities benefit from the information gathered during the preparation of these documents or are we simply wasting time?

Mr. MEARS. It is certainly possible to waste time in an environmental review, but over time my sense is that the Federal agencies

are getting much better in terms of how to do environmental impact statements, and I can tell you that in my department we rely very heavily on the environmental impact assessment work done by Federal agencies that informs our own decisions and help communities make their decisions as well.

Mr. TONKO. Thank you.

Mr. BLACKBURN. Yes, the environmental review process is critically important to landowners and other citizens throughout the pipeline routes. It, for example, allows them to understand something about economics for pipelines, which are critical to the national interest and allows them to understand the impacts to their own particular properties and the ways that those impacts can be limited. If we are going to ask landowners to take a bullet for the country, they should at least know that the pipeline is needed and what can be done to limit the harm.

Mr. TONKO. Thank you very much.

And, Mr. Burpee, a transmission project coming through New York State is currently under consideration to obtain a presidential permit. It is the Champlain Hudson Power Express bringing hydropower from Quebec to New York City. New York State conducted its own analysis and review of this project prior to its consideration by the Federal Government. The process isn't fast but seems to have avoided much of the rancor of other larger transmission projects. Do we need an overhaul of this system?

Mr. BURPEE. I am sorry. You tailed off at the end. I didn't hear the end of the question.

Mr. TONKO. Do we need an overhaul of the system that guides the transmission project coming into States?

Mr. BURPEE. Yes, I think it is clear that there are opportunities to do things more quickly than they are currently happening and more efficiently at lower costs, so I think there is still a need for an overhaul, yes.

Mr. TONKO. So the system is not working as reasonably well as it could?

Mr. BURPEE. We believe it could be working much better. We can't really comment specifically on this bill because I don't understand all the nuances of U.S. legislation. But just to give you the observation we have, we can do a proper review with public consultation involvement and get things done faster in the Canadian system.

Mr. TONKO. Thank you. Thank you very much.

And with that, Mr. Chair, I will yield back.

Mr. GARDNER. Thank you. The gentleman yields back.

And with that, this concludes our hearing for today. I want to thank all of the witnesses for their time and then just remind people to clear the conversations from the room. We do have another committee meeting beginning in this room in just 10 minutes. So thank you so much to the witnesses for being here.

With that, the committee is adjourned.

[Whereupon, at 12:51 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

.....

(Original Signature of Member)

113TH CONGRESS
1ST SESSION

H. R. 3301

To require approval for the construction, connection, operation, or maintenance of oil or natural gas pipelines or electric transmission facilities at the national boundary of the United States for the import or export of oil, natural gas, or electricity to or from Canada or Mexico, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. UPTON (for himself, Mr. GENE GREEN of Texas, Mr. BARTON, Mr. COLLINS of New York, Mr. COSTA, Mr. CRAMER, Mr. CUELLAR, Mr. GALLEGO, Mr. HINOJOSA, Mr. MATHESON, Mrs. MCMORRIS RODGERS, Mr. PETERSON, Mr. POMPEO, Mr. TERRY, Mr. VELA, and Mr. WHITFIELD) introduced the following bill; which was referred to the Committee on _____

A BILL

To require approval for the construction, connection, operation, or maintenance of oil or natural gas pipelines or electric transmission facilities at the national boundary of the United States for the import or export of oil, natural gas, or electricity to or from Canada or Mexico, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the "North American En-
3 ergy Infrastructure Act".

4 **SEC. 2. FINDING.**

5 Congress finds that the United States should estab-
6 lish a more uniform, transparent, and modern process for
7 the construction, connection, operation, and maintenance
8 of oil and natural gas pipelines and electric transmission
9 facilities for the import and export of oil, natural gas, and
10 electricity to and from Canada and Mexico, in pursuit of
11 a more secure and efficient North American energy mar-
12 ket.

13 **SEC. 3. AUTHORIZATION OF CERTAIN ENERGY INFRA-**
14 **STRUCTURE PROJECTS AT THE NATIONAL**
15 **BOUNDARY OF THE UNITED STATES.**

16 (a) AUTHORIZATION.—Except as provided in sub-
17 sections (d) and (e), no person may construct, connect,
18 operate, or maintain an oil or natural gas pipeline or elec-
19 tric transmission facility at the national boundary of the
20 United States for the import or export of oil, natural gas,
21 or electricity to or from Canada or Mexico without obtain-
22 ing approval of the construction, connection, operation, or
23 maintenance under this section.

24 (b) APPROVAL.—

25 (1) REQUIREMENT.—Not later than 120 days
26 after receiving a request for approval of construc-

1 tion, connection, operation, or maintenance under
2 this section, the relevant official identified under
3 paragraph (2), in consultation with appropriate Fed-
4 eral agencies, shall approve the request unless the
5 relevant official finds that the construction, connec-
6 tion, operation, or maintenance is not in the national
7 security interests of the United States.
8 (2) RELEVANT OFFICIAL.—The relevant official
9 referred to in paragraph (1) is—
10 (A) the Secretary of Commerce with re-
11 spect to oil pipelines;
12 (B) the Federal Energy Regulatory Com-
13 mission with respect to natural gas pipelines;
14 and
15 (C) the Secretary of Energy with respect
16 to electric transmission facilities.
17 (3) APPROVAL NOT MAJOR FEDERAL ACTION.—
18 An approval of construction, connection, operation,
19 or maintenance under paragraph (1) shall not be
20 construed to constitute a major Federal action for
21 purposes of the National Environmental Policy Act
22 of 1969 (42 U.S.C. 4321 et seq.).
23 (4) ADDITIONAL REQUIREMENT FOR ELECTRIC
24 TRANSMISSION FACILITIES.—In the case of a request
25 for approval of the construction, connection, oper-

1 ation, or maintenance of an electric transmission fa-
2 cility, the Secretary of Energy shall require, as a
3 condition of approval of the request under paragraph
4 (1), that the electric transmission facility be con-
5 structed, connected, operated, or maintained con-
6 sistent with all applicable policies and standards
7 of—
8 (A) the Electric Reliability Organization
9 and the applicable regional entity; and
10 (B) any Regional Transmission Organiza-
11 tion or Independent System Operator with
12 operational or functional control over the elec-
13 tric transmission facility.
14 (c) NO OTHER APPROVAL REQUIRED.—No Presi-
15 dential permit (or similar permit) required under Execu-
16 tive Order 13337 (3 U.S.C. 301 note), Executive Order
17 11423 (3 U.S.C. 301 note), section 301 of title 3, United
18 States Code, Executive Order 12038, Executive Order
19 10485, or any other Executive Order shall be necessary
20 for construction, connection, operation, or maintenance to
21 which this section applies.
22 (d) EXCLUSIONS.—This section shall not apply to
23 any construction, connection, operation, or maintenance of
24 an oil or natural gas pipeline or electric transmission facil-
25 ity at the national boundary of the United States for the

1 import or export of oil, natural gas, or electricity to or
2 from Canada or Mexico—
3 (1) if the pipeline or facility is operating at
4 such national boundary for such import or export as
5 of the date of enactment of this Act;
6 (2) if a permit described in subsection (c) for
7 such construction, connection, operation, or mainte-
8 nance has been issued;
9 (3) if approval of such construction, connection,
10 operation, or maintenance has previously been ob-
11 tained under this section; or
12 (4) if an application for a permit described in
13 subsection (c) for such construction, connection, op-
14 eration, or maintenance is pending on the date of
15 enactment of this Act, until the earlier of—
16 (A) the date on which such application is
17 denied; or
18 (B) July 1, 2016.
19 (e) MODIFICATIONS TO EXISTING PROJECTS.—No
20 approval under this section, or permit described in sub-
21 section (c), shall be required for modifications to construc-
22 tion, connection, operation, or maintenance described in
23 paragraph (1), (2), or (3) of subsection (d), including re-
24 versal of flow direction, change in ownership, volume ex-
25 pansion, downstream or upstream interconnection, or ad-

1 justments to maintain flow (such as a reduction or in-
2 crease in the number of pump or compressor stations).
3 (f) EFFECT OF OTHER LAWS.—Nothing in this sec-
4 tion shall affect the application of any other Federal stat-
5 ute to a project for which approval of construction, con-
6 nection, operation, or maintenance is sought under this
7 section.
8 (g) DEFINITIONS.—In this section—
9 (1) the term "natural gas" has the meaning
10 given that term in section 2 of the Natural Gas Act
11 (15 U.S.C. 717a);
12 (2) the term "oil" means petroleum or a petro-
13 leum product;
14 (3) the terms "Electric Reliability Organiza-
15 tion" and "regional entity" have the meanings given
16 those terms in section 215 of the Federal Power Act
17 (16 U.S.C. 824o); and
18 (4) the terms "Independent System Operator"
19 and "Regional Transmission Organization" have the
20 meanings given those terms in section 3 of the Fed-
21 eral Power Act (16 U.S.C. 796).
22 **SEC. 4. IMPORTATION OR EXPORTATION OF NATURAL GAS**
23 **TO CANADA AND MEXICO.**
24 Section 3(c) of the Natural Gas Act (15 U.S.C.
25 717b(c)) is amended by adding at the end the following:

1 "No order is required under subsection (a) to authorize
2 the export or import of any natural gas to or from Canada
3 or Mexico.".

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

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

9 (b) CONFORMING AMENDMENTS.—

10 (1) STATE REGULATIONS.—Section 202(f) of
11 the Federal Power Act (16 U.S.C. 824a(f)) is
12 amended by striking "insofar as such State regula-
13 tion does not conflict with the exercise of the Com-
14 mission's powers under or relating to subsection
15 202(e)".

16 (2) SEASONAL DIVERSITY ELECTRICITY EX-
17 CHANGE.—Section 602(b) of the Public Utility Reg-
18 ulatory Policies Act of 1978 (16 U.S.C. 824a–4(b))
19 is amended by striking "the Commission has con-
20 ducted hearings and made the findings required
21 under section 202(e) of the Federal Power Act" and
22 all that follows through the period at the end and
23 inserting "the Secretary has conducted hearings and
24 finds that the proposed transmission facilities would
25 not impair the sufficiency of electric supply within

1 the United States or would not impede or tend to
2 impede the coordination in the public interest of fa-
3 cilities subject to the jurisdiction of the Secretary.".

4 **SEC. 6. EFFECTIVE DATE; RULEMAKING DEADLINES.**

5 (a) EFFECTIVE DATE.—Sections 3, 4, and 5, and the
6 amendments made by such sections, shall take effect on
7 July 1, 2015.

8 (b) RULEMAKING DEADLINES.—Each relevant offi-
9 cial described in section 3(b)(2) shall—

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

14 (2) not later than 1 year after the date of en-
15 actment of this Act, publish in the Federal Register
16 a final rule to carry out the applicable requirements
17 of section 3.

Statement of Dr. Michael Knotek,
Deputy Under Secretary for Science and Energy
On the "North American Energy Infrastructure Act"
Before the Committee on Energy and Commerce
Subcommittee on Energy and Power
U.S. House of Representatives
October 29, 2013

Chairmen Upton and Whitfield, Ranking Members Waxman and Rush, and Members of the Committee, I appreciate the opportunity to provide a statement for the record about the Department of Energy's role in Presidential permitting of cross-border electrical transmission lines, and in licensing of natural gas imports and exports under the Natural Gas Act. The draft legislation being considered by the Committee would have ramifications on the Department's handling of both of these current functions. While the Department is still reviewing the draft legislation there are a number of concerns with the bill, as drafted. I will describe the Department's understanding of the bill's effects on current departmental activities.

Cross-Border Transmission Permitting

Currently, the permitting of cross-border transmission facilities is governed by Executive Orders 10485 and 12038. The process put in place by those Executive Orders requires a determination that the transmission line or facility is in the public interest. The draft bill, "North American Energy Infrastructure Act," would require the Secretary of Energy "in consultation with appropriate Federal agencies" to approve a request to construct and operate a cross-border transmission facility unless it is not in our national security interests. This is a significant change from

current policy for the permitting of cross-border projects and could limit the ability of the Executive Branch to make reasoned and responsible decisions. The Act would also eliminate environmental reviews that are currently required for such projects by the National Environmental Policy Act of 1969 (NEPA). Eliminating NEPA reviews for could undermine the reasoned consideration of the environmental effects of such projects and impede the opportunity to consider alternatives with less adverse impacts on communities and the environment.

The most notable change the bill would make is to change the standard of review from one in which the Secretary of Energy is empowered to issue a permit "upon finding [it] to be consistent with the public interest" to one in which the Department must approve construction and operation unless within 120 days the Secretary "finds that [it] is not in the national security interests of the United States." This would eliminate consideration of criteria currently evaluated that bear on our public interest but not on national security. The bill would prevent the thorough consideration of complex issues that could have serious safety, environmental, and other ramifications.

The bill would also require a new framework at the Department for evaluating these facilities, and would place the burden on the Department to make an affirmative national security finding. Furthermore, in addition to the change from a public interest to a national security standard, the bill also changes the role of other the Departments of Defense and State from concurrence to consultation.

The bill would require the Department to act on a request to construct or operate a cross-border facility within 120 days of receiving the request. The bill, however, does not require that those 120 days begin after the Department has received sufficient information to make the national security interest determination. With respect to review under the National Environmental Policy Act of 1969 (NEPA), the bill states that the approval of a request to construct or operate a cross-border electric transmission facility under section 1 of the bill would not constitute a "major Federal action." This provision would remove the requirement to conduct a NEPA review before the Department issues a permit to construct or operate a cross-border electric transmission facility. However, some such facilities may undergo NEPA review notwithstanding this provision insofar as they require some other action that would constitute a "major Federal action" under NEPA. Further, even in the absence of other "major Federal actions," DOE's proposed approval of cross border transmission facilities might still trigger lengthy reviews under other environmental and conservation statutes such as the Endangered Species Act and the National Historic Preservation Act. The legal effect of these requirements, in light of the bill's direction to approve construction or operation within 120 days (absent an adverse national security finding) is unclear. In addition, the bill would not eliminate the role of States in siting and approving transmission lines.

Finally, DOE is currently reviewing multiple applications for Presidential permits and undertaking associated reviews under NEPA. It appears that the bill would curtail the Department's review of these pending applications, creating

uncertainty for affected communities, by limiting the Department's decision to whether the facility is in the national security interests.

Natural Gas Import and Export

The bill also seeks to negate DOE's jurisdiction over exports or imports of natural gas to or from Canada or Mexico. Because the United States has free trade agreements requiring national treatment for trade in natural gas (FTAs) with Canada and Mexico, companies in the United States seeking to export to or import from Canada or Mexico can obtain authorization under section 3(c) of the Natural Gas Act. Section 3(c) requires the Department to grant authorization to export to or import from FTA countries "without modification or delay." Applications under section 3(c) are relatively simple filings and authorizations under section 3(c) typically issue within two to four weeks of a request, but may issue more quickly if necessary. Therefore, very little regulatory burden would be alleviated by this provision. Eliminating the requirement for these FTA authorizations to Canada and Mexico may, however, reduce DOE's ability to monitor cross-border trade in natural gas and could lessen its ability to enforce other requirements typically imposed as conditions to FTA authorizations, such as prohibitions against trans-shipment to countries with which trade is barred by United States law or policy and countries for which a non-FTA authorization is required.

Conclusion

The Department is continuing to review the draft legislation, but has serious concerns, as outlined above. If the Committee has any further questions, we would be pleased to respond.

Written Statement Submitted by the Bureau of Industry and Security
Department of Commerce
Kevin J. Wolf
Assistant Secretary for Export Administration

"North American Energy Infrastructure Act" Hearing
Subcommittee on Energy and Power
Committee on Energy and Commerce
House of Representatives
October 29, 2013

The Bureau of Industry and Security of the U.S. Department of Commerce is responsible for administering and enforcing controls on the export of a wide range of items, including crude oil. The Bureau is also responsible for domestic implementation of certain nonproliferation treaties, carrying out a number of defense industrial base activities, and administering and enforcing the law and regulations prohibiting the participation of U.S. persons in unsanctioned foreign boycotts.

Laws

U.S. export controls on crude oil are based on several laws. The primary statute relating to oil exports is the Energy Policy and Conservation Act of 1975 (EPCA). EPCA directs the President to restrict the export of crude oil produced in the United States. Responsibility for implementation of the Act's export provisions was delegated to the Secretary of Commerce.

Other statutes place further specific restrictions on exports of crude oil transported on pipelines that received federal rights of way (Mineral Lands Leasing Act (MLA)); of oil produced on the outer continental shelf (Outer Continental Shelf Lands Act); or oil produced from the Naval Petroleum Reserve (Naval Petroleum Reserves Production Act). There are other statutes and findings that permit certain types of oil exports, including when it is shipped over the Trans Alaska Pipeline (TAPS) (Exports of Alaskan North Slope Oil); if it is of foreign origin; or is from the Strategic Petroleum Reserve.

Implementing Regulations

The Bureau of Industry and Security's Export Administration Regulations (EAR) codify the requirements and provisions of these various statutes. In particular, Section 754.2 of the EAR controls for reasons of short supply the export of crude oil, including reconstituted crude petroleum, tar sands and crude shale oil. Part 754 also imposes short supply controls on the export of certain petroleum products, natural gas liquids and derivatives that were produced or derived from the Naval Petroleum Reserve.

As set forth in Section 754.2, a license is required for the export of crude oil to all destinations, including Canada, with a few limited exceptions. The export licensing policy described in Section 754.2 is to approve crude oil exports if the exports are consistent with the specific statutory requirements pertinent to that export. The President is also authorized by the EPCA to exempt the prohibition on exports as long as the exemptions are consistent with the national interest and the need to leave oil supplies uninterrupted or unimpaired.

The following kinds of transactions will be generally approved: Exports from Alaska's Cook Inlet (not transported over TAPS or MLA, based on a presidential finding of 1985); exports to Canada for consumption or use therein (based on presidential findings of 1985 and 1988); exports in connection with refining or exchange of strategic petroleum reserve oil; exports that are consistent with international energy supply agreements; exports of foreign-origin crude ; exports of California Heavy crude up to 25 million barrels per day (based on presidential finding of 1992); temporary exports or exchanges. Exports of oil not meeting these criteria will be considered on a case-by-case basis, and will generally be approved if BIS determines that the proposed export is consistent with the national security interests and the purposes of the EPCA.

Other exports of U.S.-origin crude oil will generally be approved as in the national interest and consistent with the purposes of EPCA if the export is part of an overall transaction that: 1) will result in the importation into the United States of an equal or greater quantity of and equal or better quality of crude oil or refined petroleum products; 2) is made under a contract that may be terminated if the petroleum supplies of the United States are interrupted or seriously threatened; and 3) for which the applicant can demonstrate that for compelling economic or technological reasons cannot be reasonably marketed in the United States.

The following exceptions to the license requirements correspond to the provisions of the laws and regulations identified above. These exceptions are: SPR – Shipments from the Strategic Petroleum Reserve; TAPS – Shipments on the TransAlaska Pipeline; and SS - Sample shipments.

Licensing Data

BIS has issued an increasing number of licenses for exports of crude oil in recent years. Most of the license applications BIS has received and approved in recent years are for exports of oil for consumption and use in Canada. Most of the other licenses authorized exports of foreign-origin oil.

In Fiscal Year 2011, BIS issued 45 licenses, of which 39 were for exports to Canada. In Fiscal Year 2012, BIS issued 66 licenses, of which 62 were for exports to Canada. Exporters apply for licenses to ship crude oil for consumption or use in Canada based on a number of factors, including refinery availability and transportation costs.

North American Energy Infrastructure Act

The North American Energy Infrastructure Act would require the Secretary of Commerce to review requests to construct or operate an oil pipeline within 120 days of a request and approve such a request unless the project is not in the national security interests of the United States. This is a significant change from current policy for the permitting of cross-border projects and would unnecessarily limit the ability for the Executive Branch to make reasoned and responsible decisions. The Act would also eliminate environmental assessments that would be required for such projects by the National Environmental Policy Act of 1969. It is the Administration's view that eliminating the National Environmental Policy Act (NEPA) compliance for projects will undermine the reasoned consideration of the environmental effects of such projects and impede the opportunity to consider alternatives with less adverse impacts on communities and the environment.

As noted above, the Commerce Department's Bureau of Industry and Security has experience in administering controls on the export of crude oil consistent with existing statutory requirements. However, the Department of Commerce has never operated under the framework that would be created by the North American Energy Infrastructure Act. The Department is continuing to review the draft legislation, but the Administration has serious concerns, as outlined above. If the Committee has any further questions, we would be pleased to respond.

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED THIRTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6115
Majority (202) 225-2927
Minority (202) 225-3641

November 18, 2013

Mr. Jim Burpee
President and CEO
Canadian Electricity Association
275 Slater Street, Suite 1500
Ottawa, Ontario K1P 5H9
Canada

Dear Mr. Burpee:

Thank you for appearing before the Subcommittee on Energy and Power on Tuesday, October 29, 2013, to testify at the hearing entitled "H.R. 3301, the North American Energy Infrastructure Act."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions by the close of business on Monday, December 11, 2013. Your responses should be e-mailed to the Legislative Clerk in Word format at Nick.Abraham@mail.house.gov and mailed to Nick Abraham, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

Ed Whitfield

Ed Whitfield
Chairman
Subcommittee on Energy and Power

cc: The Honorable Bobby L. Rush, Ranking Member,
Subcommittee on Energy and Power

Attachment

Responses of Jim Burpee
President & Chief Executive Officer
Canadian Electricity Association
to Questions for the Record
House of Representatives Committee on Energy and Commerce
Subcommittee on Energy and Power
"H.R. 3301, the North American Energy Infrastructure Act" – October 29, 2013

The Honorable Robert E. Latta

1. **Your testimony emphasizes the importance of modernizing the permitting process to facilitate the siting and construction of cross-border transmission projects.**

    a. **How would modernizing the permitting process facilitate such a development?**

In order to make the investments needed to expand the physical linkages between the Canadian and U.S. segments of the grid and to maximize North America's clean energy potential, the electricity sector requires increased regulatory certainty and efficiency.

A modernized permitting process would mitigate or eliminate the types of challenges which create uncertainty and risk from a planning perspective, cause the escalation of undue administrative costs and burdens for proponents, and – in more acute circumstances – potentially deter a project sponsor from proceeding with a permit application altogether.

A timely, predictable and streamlined permitting process is a fundamental component of a broader policy and regulatory environment which is conducive to enabling investment to flow into new and refurbished electricity infrastructure.

    b. **What recommendations do you have for modernizing the permitting process?**

The Canadian Electricity Association ("CEA") believes that lessons can be learned from actions taken by the Government of Canada to modernize the permitting process, such as the following:

- Updated administrative procedures governing the submittal of applications;
- Adjustments in review and permit requirements to reflect evolutions in electric power markets and reliability standards developed by the North American Electric Reliability Corporation ("NERC");
- Consistent adoption of a "one project, one review" approach to environmental assessments, in which relevant provincial and federal authorities coordinate in preparing a single environmental review of a proposed international power line ("IPL");

- Refined project review parameters, which focus the scope of a review on the potential adverse environmental impacts associated with the proposed project itself, not with upstream or downstream activity;

- Reduction of the administrative burden on permit holders applying for a permit amendment to effect an operational or physical change, or to transfer ownership of an IPL; and

- Establishment of fixed timelines for completing the review process, while retaining a rigorous standard for performance of environmental review.

Additionally, as stated in CEA's written testimony, CEA strongly believes that there are many efficiencies to be gained from the Department of Energy ("DOE") formally cooperating with its counterpart in Canada, the National Energy Board ("NEB"), to align the agencies' respective approaches to permitting IPLs. Such cooperation can assist DOE and NEB in taking a more coordinated approach to project reviews and in addressing mismatches and inconsistencies which currently exist between their respective processes.

c. Would you agree that H.R. 3301 takes an important step towards achieving such objectives?

CEA views the introduction of H.R. 3301 as an opportunity to examine how well the respective permitting processes in Canada and the U.S. for IPLs are working, and where there can be better synergies in the approaches utilized on either side of the border with the aim of deriving maximum efficiency, while protecting consumers and the environment.

CEA is pleased to see that the bill proposes the establishment of fixed timelines for permitting processes; modernization of procedures to avoid duplication of existing market and regulatory measures; and efficiencies in project reviews, including for routine proceedings such as transfers of ownership. While these principles underlying H.R. 3301 are commendable, CEA maintains that these changes should ensure a continued rigorous standard for performance of environmental reviews at some stage of the process.

In addition, CEA wishes to emphasize that many of its foregoing observations are applicable to DOE's process for authorizing the exportation of electricity to Canada.

2. You note in your testimony that electric utilities in both Canada and the U.S. are projecting large investment needs in grid-related infrastructure, correct?

Yes. According to a 2012 Conference Board of Canada report, *Shedding Light on the Economic Impact of Investing in Electricity Infrastructure,* upwards of C$350 billion is needed to refurbish,

renew and replace electricity infrastructure in Canada over the next 20 years. This translates into an average annual investment requirement of C$15 billion – the highest in the country's history. In the U.S., the sector is also confronting the daunting task to fund record levels of capital expenditures. For example, we have observed that investor-owned utilities are projecting investment needs in the unprecedented range of US$85 billion alone through 2013.

a. Would you agree that the permitting process for trans-boundary transmission lines can at times be overly burdensome, confusing and unnecessarily lengthy?

DOE has publicly stated that it requires approximately 6-18 months to issue a Presidential Permit. However, the recent record in Presidential Permit proceedings reveals a trend of delays and much longer timelines. For example, among the applications currently pending before DOE, the project that has been in the queue the longest has spent more than three-and-a-half years under review. Processing times for these applications have also suffered significant inconsistencies. Accordingly, it seems that there is a substantial mismatch between DOE's targeted timelines for issuing Presidential Permits and the actual timelines which play out in practice.

Where the process appears particularly burdensome is with respect to routine proceedings involving existing IPLs, such as transfers of ownership and physical or operational changes. In 2010, for example, a CEA member filed a request to amend its Presidential Permit for purposes of a straightforward transfer of ownership. This took approximately two-and-a-half years to process and required an application filing over 60 pages in length. For the Canadian segment of the IPL, the corresponding proceeding was completed in less than seven months and required only a three-page application.

Such requirements in the Presidential Permit context result in an undue level of administrative burden and costs, and therefore stand to benefit from targeted modifications.

b. Would you agree that such problems could have a chilling effect on future investment in critical cross-border infrastructure?

On balance, CEA understands that the electricity sector's experience with DOE's Presidential Permit process has usually been satisfactory and has not encountered the kind of challenges more recently faced by other sectors in the energy industry.

CEA is not aware of any specific circumstances in which inconsistencies have jeopardized the viability of an IPL. However, as noted above, inconsistent timelines and systemic delays in the permitting process do inject uncertainty and risk, and can result in unnecessary escalation of administrative costs for proponents.

Perhaps more importantly, inconsistencies and delays leave customers unnecessarily deprived of the tangible benefits associated with IPL projects. These benefits can take the form of enhanced reliability, lower rates, construction and other jobs, opportunities to access other

supplies of power in the case of a contingency or emergency event, or delays in bringing online new sources of renewable energy from projects located in the United States.

It is worth noting that since the October 29, 2013 subcommittee hearing, another IPL project has been formally proposed – the New England Clean Power Link. On October 31, TDI New England announced plans to construct this US$1.2 billion, 1,000 MW underwater and underground transmission line from the Canadian border to southern Vermont.

3. **What steps has Canada taken to improve its permitting process for the siting and construction of energy infrastructure? What lessons has Canada learned from trying to streamline its permitting process and what recommendations would you offer to the United States as we seek to improve our energy infrastructure permitting process?**

The Government of Canada – through its *Responsible Resource Development* plan – has sought to update permitting and review processes for major infrastructure projects, with a focus on establishing clear timelines, reducing duplication and regulatory burdens, strengthening environmental protection, and enhancing consultation with Aboriginal peoples.

Their regulatory modernization efforts have included such steps as consolidation of federal departments' responsibilities over environmental assessments ("EAs") and substitution or equivalency with provincial EAs provided they fulfill federal requirements; establishment of fixed beginning-to-end timelines for EAs, ranging from 12-24 months; establishment of legally-binding timelines for execution of permitting processes; and enhanced powers for federal authorities in order to conduct reviews in a timely and cost-effective manner. (The government's efforts have also included those actions outlined in the response to 1b. above).

Among other things, the reforms have increased flexibility for the federal and provincial governments to determine how best to leverage their respective levels of expertise in coordinating project reviews. It should be noted, though, that these reforms have not come at the expense of the quality of the rigorous environmental protection and stakeholder consultation requirements which have long been a hallmark of the federal regulatory regime in Canada.

Many of these reforms were undertaken subsequent to the establishment by the Government of Canada of a Major Projects Management Office ("MPMO") in 2007. MPMO's mandate is to coordinate regulatory review across relevant federal departments of all major natural resource projects. According to government reports, within its first five years, MPMO was able to shorten the average review time for projects from four years to 22 months. However, in order to most effectively modernize federal permitting and review processes and to maximize efficiencies therein, the Government of Canada recognized that targeted amendments to governing legislation and regulation were necessary. These amendments were enacted as part of omnibus federal budget legislation passed in Canada in 2012.

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED THIRTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6115
Majority (202) 225-2927
Minority (202) 225-3641

November 18, 2013

Ms. Mary J. Hutzler
Distinguished Senior Fellow
Institute for Energy Research
82 Wood Duck Drive
Berlin, MD 21811

Dear Ms. Hutzler:

Thank you for appearing before the Subcommittee on Energy and Power on Tuesday, October 29, 2013, to testify at the hearing entitled "H.R. 3301, the North American Energy Infrastructure Act."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

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Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

Ed Whitfield

Ed Whitfield
Chairman
Subcommittee on Energy and Power

cc: The Honorable Bobby L. Rush, Ranking Member,
Subcommittee on Energy and Power

Attachment

Hearing Questions for the Record
The Honorable Robert E. Latta

Hearing on North America Energy Infrastructure Act
Mary J. Hutzler

1. **In your testimony, you state that with Canada's oil reserves at over 170 billion barrels, Canada can help the United states decrease its reliance on Persian Gulf oil, but it must be allowed to trade energy freely and transport it in a safe and reliable manner. If the reforms in this bill would go into effect, how much do you believe it would decrease U.S. reliance on oil imports from Persian Gulf states?**
   Response: Canada currently produces about 3.7 million barrels per day of petroleum. By 2040, the Energy Information Administration (EIA) expects Canada to produce 6.2 million barrels per day. The United States currently imports 2.946 million barrels per day of oil and petroleum products from Canada. Canada is the largest supplier of oil and petroleum products to the United States, supplying almost 99 percent of its oil and petroleum product exports to the United States. It is expected that if the transportation infrastructure were available, most of Canada's additional petroleum production of 2.5 million barrels per day by 2040, would be exported to the United States.

   In 2012, the United States imported 4.27 million barrels per day from OPEC, of which 2.156 million barrels per day came from the Persian Gulf. For the first seven months of 2013, imports from OPEC have declined to 3.79 million barrels per day and imports from the Persian Gulf have declined to 1.937 million barrels per day. Since Canadian oil is mostly heavy oil, those imports would displace heavy oil coming from the Persian Gulf and elsewhere in OPEC, such as Venezuela, assuming no major increase in petroleum consumption. EIA expects petroleum consumption in 2040 to be about the same as it was in 2011.

   The increased Canadian production of 6.2 million barrels per day would span the next 2 and a half decades, allowing time for infrastructure improvements. However, EIA expects Canada to increase production by 1.0 million barrels per day by 2015 and 1.4 million barrels per day by 2020, so the Keystone XL pipeline with capacity of 830,000 barrels per day, for example, would help to move a sizable portion of the increase if the pipeline were constructed in the near future.

   In truth, we cannot say for certain the levels of imports the United States would receive and the countries from which we would receive them, but the current growth rates in domestic oil production and increasing Canadian oil production indicate that North America could eventually become independent of overseas oil. Canada is a secure energy partner and ally, and since our nations border one another, pipeline transportation of energy – the safest and most economical means – will likely result in more energy trade in both directions.

2. **You discuss how EPA's proposed coal-fired power plant regulations will essentially end the industry as we know it, leading to an increased need for natural gas and natural-gas-fired power plants. You also say that the U.S. currently gets 3 trillion cubic feet of natural gas from Canada, about 12 percent of our annual natural gas consumption. Under the reforms of this bill:**

   a. **How much do you believe the U.S. will be able to increase its natural gas importation; and**

   Response: According to EIA forecasts, the United States will be producing sufficient natural gas domestically to fulfill our needs through 2040 and to also become a net natural gas exporter. The agency expects natural gas production in the United States to grow from 23 trillion cubic feet in 2011 to 33 trillion cubic feet in 2040, of which 16.7 trillion cubic feet is expected to be from shale gas production. The agency estimates shale gas technically recoverable resources to total 750 trillion cubic feet and total natural gas technically recoverable resources to be 2,335 trillion cubic feet, enough for over 90 years at current consumption rates. Thus, additional internal transportation infrastructure will be needed in the United States to move the additional natural gas to new demand centers.

   Because there is uncertainty regarding the amount of domestic resources and their export availability, it would be prudent , however, to ensure that all avenues of supply are open so that natural gas would be available even if bottlenecks were to occur. One such bottleneck occurred when California was in the midst of deregulating its electric generation sector. Natural gas deliverability problems resulted in a shortage of natural gas-fired generation in California. Since natural-gas fired technology was the marginal generation source setting the price, electricity prices skyrocketed.

   Another deliverability problem occurred early this year when a cold snap hit the Northeast making temperatures plummet and natural gas and electricity prices escalate. This occurred because the existing pipeline infrastructure was unable to meet rising natural gas demand when temperatures fell.

   Besides bottlenecks and deliverability problems, geographic issues may limit the availability of domestic sources of supply, resulting in the need for natural gas to be imported from our trusted northern ally.

   With new uses for American natural gas coming into vogue as a transportation fuel, for increased petrochemical production and for export as liquefied natural gas, the United States needs to ensure that all avenues of supply are open and available to the market. We need to ensure that we have an infrastructure system that allows access to supplies, providing a flexible, reliable, and stable market place, and pipelines serve that need.

   b. **Is it enough to offset the energy production we will lose as a result of U.S. coal-fired power plants being shutdown?**

Response: According to the Energy Information Administration, 47 gigawatts of coal-fired plant retirements are expected by 2017. EIA expects a combination of mainly natural gas, nuclear power, and renewable technologies (primarily wind and solar, but also biomass and geothermal) to replace the reitiring coal-fired capacity. With the growth in domestic natural gas production, there is sufficient physical supply to meet that demand.

However, one needs to be cautious regarding this forecast in that a number of nuclear plant retirements are expected due to low natural gas prices making it difficult for some merchant plants to compete and to delays by the Nuclear Regulatory Commission in approving life extensions and requests to restart downed nuclear units. EIA also ssumes that there will be 8 gigawatts of uprates added to existing nuclear capacity that also may not materialize. If EIA's nuclear forecast does not become reality, additional gas-fired power plants would be needed to fill the gap from the retiring coal-fired units. While there is sufficient natural gas supply to handle this, market forces need to provide clear signals to the producers and builders of gas-fired generating capacity.

Another source of caution regarding EIA's forecast is EPA's upcoming regulation of carbon dioxide emissions from existing power plants. EPA may impose draconian carbon dioxide restrictions on both existing coal and natural gas plants since both emit carbon dixoide emissions, which would lead to closures of both types of plants. Further, if EPA's regulation shuts down all existing coal-fired power plants, it would be difficult for natural gas to fill the gap, especially given the fact that EPA could clamp down on natural gas power plants' carbon dioxide emissions as well at any time

Another issue is that for the remainder of this decade, EIA's natural gas price projections are low, increasing by less than 4 percent, which makes natural gas attractive as a replacement fuel. However, by 2040, natural gas prices are expected to almost double in real terms, and further government regulatory or tax actions could exacerbate those increases. With higher natural gas prices expected in the future and the cost of constructing new generating capacity, retiring perfectly good nuclear and coal-fired capacity, whose capital costs have already been paid and therefore offer some of the most reasonably priced generation, may not be a prudent choice for the United States. Recent chaos in the generation markets in Europe owing to government policies should provide a cautionary tale about the impact of such policies on prices, consumers and the ability to compete in energy intensive industrial activities.

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED THIRTEENTH CONGRESS

Congress of the United States
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2125 RAYBURN HOUSE OFFICE BUILDING
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Minority (202) 225-3641

November 18, 2013

Mr. John H. Kyles
Senior Attorney
Plains All American Pipeline, L.P.
333 Clay Street, Suite 1600
Houston, TX 77002

Dear Mr. Kyles:

Thank you for appearing before the Subcommittee on Energy and Power on Tuesday, October 29, 2013, to testify at the hearing entitled "H.R. 3301, the North American Energy Infrastructure Act."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

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Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

Ed Whitfield
Chairman
Subcommittee on Energy and Power

cc: The Honorable Bobby L. Rush, Ranking Member,
Subcommittee on Energy and Power

Attachment

John H. Kyles
Senior Attorney

Phone: (713) 993-5136
Fax: (713) 646-4216

December 11, 2013

The Honorable Ed Whitfield
Chairman, Subcommittee on Energy and Power
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Attn: Nick Abraham, Legislative Clerk

RE: Subcommittee on Energy and Power Hearing, "H.R. 3301, the North American Energy Infrastructure Act", October 29, 2013 – Responses to Questions for the Record

Dear Mr. Chairman,

Thank you for the opportunity to present testimony before your Committee. I very much appreciate the courtesies I was extended by you, your fellow Committee Members and staff.

Pursuant to your request for responses to Committee Member questions, I offer the following responses to the Honorable Robert E. Latta's questions:

1. **You stated besides the Keystone XL pipeline, there are many other Presidential Permit applications stuck at the State Department also facing multi-year delays.**

   a. **Do you know what that number is?**

   When I testified on Tuesday, October 29, 2013, research of the Federal Register reflected there were ten (10) Presidential Permit Applications pending before the U.S. Department of State.

   Since testifying, one permit has been issued, but that still leaves nine (9) pending Applications.

   b. **Do you know what the number of the ones in which the projects are simple changes of ownership filings?**

   When I testified on Tuesday, October 29, 2013, eight (8) of the pending Presidential Permit Applications were name changes of ownership filings.

   Today, seven (7) name changes of ownership filings remain pending.

Do not hesitate to contact me if I can be of further assistance.

Regards,

[redacted]

John H. Kyles

Clay Street, Suite 1600 (77002) P.O. Box 4648 Houston, Texas 77210-4648 713-646-4100

PAA: LAW_COM: 746601v1333