

Union Calendar No. 15

118TH CONGRESS
1ST SESSION

H. R. 1115

[Report No. 118-23]

To provide for Federal and State agency coordination in the approval of certain authorizations under the Natural Gas Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 21, 2023

Mr. BURGESS introduced the following bill; which was referred to the Committee on Energy and Commerce

MARCH 23, 2023

Additional sponsors: Mrs. MILLER-MEEKS, Mr. DUNCAN, Mr. CURTIS, and Mr. BUCSHON

MARCH 23, 2023

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on February 21, 2023]

A BILL

To provide for Federal and State agency coordination in the approval of certain authorizations under the Natural Gas Act, 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,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Promoting Interagency*
5 *Coordination for Review of Natural Gas Pipelines Act”.*

6 **SEC. 2. FERC PROCESS COORDINATION FOR NATURAL GAS**
7 **PIPELINE PROJECTS.**

8 *(a) DEFINITIONS.—In this section:*

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

11 *(2) FEDERAL AUTHORIZATION.—The term “Fed-*
12 *eral authorization” has the meaning given that term*
13 *in section 15(a) of the Natural Gas Act (15 U.S.C.*
14 *717n(a)).*

15 *(3) NEPA REVIEW.—The term “NEPA review”*
16 *means the process of reviewing a proposed Federal ac-*
17 *tion under section 102 of the National Environmental*
18 *Policy Act of 1969 (42 U.S.C. 4332).*

19 *(4) PROJECT-RELATED NEPA REVIEW.—The term*
20 *“project-related NEPA review” means any NEPA re-*
21 *view required to be conducted with respect to the*
22 *issuance of an authorization under section 3 of the*
23 *Natural Gas Act or a certificate of public convenience*
24 *and necessity under section 7 of such Act.*

1 **(b) COMMISSION NEPA REVIEW RESPONSIBILITIES.**—
2 *In acting as the lead agency under section 15(b)(1) of the*
3 *Natural Gas Act for the purposes of complying with the*
4 *National Environmental Policy Act of 1969 (42 U.S.C.*
5 *4321 et seq.) with respect to an authorization under section*
6 *3 of the Natural Gas Act or a certificate of public conven-*
7 *ience and necessity under section 7 of such Act, the Commis-*
8 *sion shall, in accordance with this section and other appli-*
9 *cable Federal law—*

10 (1) *be the only lead agency;*

11 (2) *coordinate as early as practicable with each*
12 *agency designated as a participating agency under*
13 *subsection (d)(3) to ensure that the Commission devel-*
14 *ops information in conducting its project-related*
15 *NEPA review that is usable by the participating*
16 *agency in considering an aspect of an application for*
17 *a Federal authorization for which the agency is re-*
18 *sponsible; and*

19 (3) *take such actions as are necessary and prop-*
20 *er to facilitate the expeditious resolution of its project-*
21 *related NEPA review.*

22 **(c) DEFERENCE TO COMMISSION.**—*In making a deci-*
23 *sion with respect to a Federal authorization required with*
24 *respect to an application for authorization under section*
25 *3 of the Natural Gas Act or a certificate of public conven-*

1 *ience and necessity under section 7 of such Act, each agency*
2 *shall give deference, to the maximum extent authorized by*
3 *law, to the scope of the project-related NEPA review that*
4 *the Commission determines to be appropriate.*

5 *(d) PARTICIPATING AGENCIES.—*

6 *(1) IDENTIFICATION.—The Commission shall*
7 *identify, not later than 30 days after the Commission*
8 *receives an application for an authorization under*
9 *section 3 of the Natural Gas Act or a certificate of*
10 *public convenience and necessity under section 7 of*
11 *such Act, any Federal or State agency, local govern-*
12 *ment, or Indian Tribe that may issue a Federal au-*
13 *thorization or is required by Federal law to consult*
14 *with the Commission in conjunction with the issuance*
15 *of a Federal authorization required for such author-*
16 *ization or certificate.*

17 *(2) INVITATION.—*

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

1 (B) *DEADLINE.*—An invitation issued
2 under subparagraph (A) shall establish a dead-
3 line by which a response to the invitation shall
4 be submitted to the Commission, which may be
5 extended by the Commission for good cause.

6 (3) *DESIGNATION AS PARTICIPATING AGEN-*
7 *CIES.*—Not later than 60 days after the Commission
8 receives an application for an authorization under
9 section 3 of the Natural Gas Act or a certificate of
10 public convenience and necessity under section 7 of
11 such Act, the Commission shall designate an agency
12 identified under paragraph (1) as a participating
13 agency with respect to an application for authoriza-
14 tion under section 3 of the Natural Gas Act or a cer-
15 tificate of public convenience and necessity under sec-
16 tion 7 of such Act unless the agency informs the Com-
17 mission, in writing, by the deadline established pur-
18 suant to paragraph (2)(B), that the agency—

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

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

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

1 (4) *EFFECT OF NON-DESIGNATION.*—

2 (A) *EFFECT ON AGENCY.*—*Any agency that*
3 *is not designated as a participating agency*
4 *under paragraph (3) with respect to an applica-*
5 *tion for an authorization under section 3 of the*
6 *Natural Gas Act or a certificate of public con-*
7 *venience and necessity under section 7 of such*
8 *Act may not request or conduct a NEPA review*
9 *that is supplemental to the project-related NEPA*
10 *review conducted by the Commission, unless the*
11 *agency—*

12 (i) *demonstrates that such review is le-*
13 *gally necessary for the agency to carry out*
14 *responsibilities in considering an aspect of*
15 *an application for a Federal authorization;*
16 *and*

17 (ii) *requires information that could not*
18 *have been obtained during the project-re-*
19 *lated NEPA review conducted by the Com-*
20 *mission.*

21 (B) *COMMENTS; RECORD.*—*The Commission*
22 *shall not, with respect to an agency that is not*
23 *designated as a participating agency under*
24 *paragraph (3) with respect to an application for*
25 *an authorization under section 3 of the Natural*

1 *Gas Act or a certificate of public convenience*
2 *and necessity under section 7 of such Act—*

3 *(i) consider any comments or other in-*
4 *formation submitted by such agency for the*
5 *project-related NEPA review conducted by*
6 *the Commission; or*

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

10 *(e) WATER QUALITY IMPACTS.—*

11 *(1) IN GENERAL.—Notwithstanding section 401*
12 *of the Federal Water Pollution Control Act (33 U.S.C.*
13 *1341), an applicant for a Federal authorization shall*
14 *not be required to provide a certification under such*
15 *section with respect to the Federal authorization.*

16 *(2) COORDINATION.—With respect to any NEPA*
17 *review for a Federal authorization to conduct an ac-*
18 *tivity that will directly result in a discharge into the*
19 *navigable waters (within the meaning of the Federal*
20 *Water Pollution Control Act), the Commission shall*
21 *identify as an agency under subsection (d)(1) the*
22 *State in which the discharge originates or will origi-*
23 *nate, or, if appropriate, the interstate water pollution*
24 *control agency having jurisdiction over the navigable*

1 *waters at the point where the discharge originates or*
2 *will originate.*

3 (3) *PROPOSED CONDITIONS.—A State or inter-*
4 *state agency designated as a participating agency*
5 *pursuant to paragraph (2) may propose to the Com-*
6 *mission terms or conditions for inclusion in an au-*
7 *thorization under section 3 of the Natural Gas Act or*
8 *a certificate of public convenience and necessity under*
9 *section 7 of such Act that the State or interstate agen-*
10 *cy determines are necessary to ensure that any activ-*
11 *ity described in paragraph (2) conducted pursuant to*
12 *such authorization or certification will comply with*
13 *the applicable provisions of sections 301, 302, 303,*
14 *306, and 307 of the Federal Water Pollution Control*
15 *Act.*

16 (4) *COMMISSION CONSIDERATION OF CONDI-*
17 *TIONS.—The Commission may include a term or con-*
18 *dition in an authorization under section 3 of the Nat-*
19 *ural Gas Act or a certificate of public convenience*
20 *and necessity under section 7 of such Act proposed by*
21 *a State or interstate agency under paragraph (3)*
22 *only if the Commission finds that the term or condi-*
23 *tion is necessary to ensure that any activity described*
24 *in paragraph (2) conducted pursuant to such author-*
25 *ization or certification will comply with the applica-*

1 *ble provisions of sections 301, 302, 303, 306, and 307*
2 *of the Federal Water Pollution Control Act.*

3 *(f) SCHEDULE.—*

4 *(1) DEADLINE FOR FEDERAL AUTHORIZA-*
5 *TIONS.—A deadline for a Federal authorization re-*
6 *quired with respect to an application for authoriza-*
7 *tion under section 3 of the Natural Gas Act or a cer-*
8 *tificate of public convenience and necessity under sec-*
9 *tion 7 of such Act set by the Commission under sec-*
10 *tion 15(c)(1) of such Act shall be not later than 90*
11 *days after the Commission completes its project-re-*
12 *lated NEPA review, unless an applicable schedule is*
13 *otherwise established by Federal law.*

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

16 *(A) that may consider an application for a*
17 *Federal authorization required with respect to*
18 *an application for authorization under section 3*
19 *of the Natural Gas Act or a certificate of public*
20 *convenience and necessity under section 7 of such*
21 *Act shall formulate and implement a plan for*
22 *administrative, policy, and procedural mecha-*
23 *nisms to enable the agency to ensure completion*
24 *of Federal authorizations in compliance with*

1 *schedules established by the Commission under*
2 *section 15(c)(1) of such Act; and*

3 *(B) in considering an aspect of an applica-*
4 *tion for a Federal authorization required with*
5 *respect to an application for authorization under*
6 *section 3 of the Natural Gas Act or a certificate*
7 *of public convenience and necessity under section*
8 *7 of such Act, shall—*

9 *(i) formulate and implement a plan to*
10 *enable the agency to comply with the sched-*
11 *ule established by the Commission under*
12 *section 15(c)(1) of such Act;*

13 *(ii) carry out the obligations of that*
14 *agency under applicable law concurrently,*
15 *and in conjunction with, the project-related*
16 *NEPA review conducted by the Commission,*
17 *and in compliance with the schedule estab-*
18 *lished by the Commission under section*
19 *15(c)(1) of such Act, unless the agency noti-*
20 *fies the Commission in writing that doing*
21 *so would impair the ability of the agency to*
22 *conduct needed analysis or otherwise carry*
23 *out such obligations;*

24 *(iii) transmit to the Commission a*
25 *statement—*

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

5 (II) setting forth the plan formu-
6 lated under clause (i) of this subpara-
7 graph;

8 (iv) not later than 30 days after the
9 agency receives such application for a Fed-
10 eral authorization, transmit to the appli-
11 cant a notice—

12 (I) indicating whether such appli-
13 cation is ready for processing; and

14 (II) if such application is not
15 ready for processing, that includes a
16 comprehensive description of the infor-
17 mation needed for the agency to deter-
18 mine that the application is ready for
19 processing;

20 (v) determine that such application for
21 a Federal authorization is ready for proc-
22 essing for purposes of clause (iv) if such ap-
23 plication is sufficiently complete for the
24 purposes of commencing consideration, re-
25 gardless of whether supplemental informa-

1 *tion is necessary to enable the agency to*
2 *complete the consideration required by law*
3 *with respect to such application; and*

4 *(vi) not less often than once every 90*
5 *days, transmit to the Commission a report*
6 *describing the progress made in considering*
7 *such application for a Federal authoriza-*
8 *tion.*

9 *(3) FAILURE TO MEET DEADLINE.—If a Federal*
10 *or State agency, including the Commission, fails to*
11 *meet a deadline for a Federal authorization set forth*
12 *in the schedule established by the Commission under*
13 *section 15(c)(1) of the Natural Gas Act, not later than*
14 *5 days after such deadline, the head of the relevant*
15 *Federal agency (including, in the case of a failure by*
16 *a State agency, the Federal agency overseeing the del-*
17 *egated authority) shall notify Congress and the Com-*
18 *mission of such failure and set forth a recommended*
19 *implementation plan to ensure completion of the ac-*
20 *tion to which such deadline applied.*

21 *(g) CONSIDERATION OF APPLICATIONS FOR FEDERAL*
22 *AUTHORIZATION.—*

23 *(1) ISSUE IDENTIFICATION AND RESOLUTION.—*

24 *(A) IDENTIFICATION.—Federal and State*
25 *agencies that may consider an aspect of an ap-*

1 *plication for a Federal authorization shall iden-*
2 *tify, as early as possible, any issues of concern*
3 *that may delay or prevent an agency from work-*
4 *ing with the Commission to resolve such issues*
5 *and granting such authorization.*

6 *(B) ISSUE RESOLUTION.—The Commission*
7 *may forward any issue of concern identified*
8 *under subparagraph (A) to the heads of the rel-*
9 *evant agencies (including, in the case of an issue*
10 *of concern that is a failure by a State agency,*
11 *the Federal agency overseeing the delegated au-*
12 *thority, if applicable) for resolution.*

13 *(2) REMOTE SURVEYS.—If a Federal or State*
14 *agency considering an aspect of an application for a*
15 *Federal authorization requires the person applying*
16 *for such authorization to submit data, the agency*
17 *shall consider any such data gathered by aerial or*
18 *other remote means that the person submits. The*
19 *agency may grant a conditional approval for the Fed-*
20 *eral authorization based on data gathered by aerial or*
21 *remote means, conditioned on the verification of such*
22 *data by subsequent onsite inspection.*

23 *(3) APPLICATION PROCESSING.—The Commis-*
24 *sion, and Federal and State agencies, may allow a*
25 *person applying for a Federal authorization to fund*

1 *a third-party contractor to assist in reviewing the ap-*
2 *plication for such authorization.*

3 *(h) ACCOUNTABILITY, TRANSPARENCY, EFFICIENCY.—*

4 *For an application for an authorization under section 3*
5 *of the Natural Gas Act or a certificate of public convenience*
6 *and necessity under section 7 of such Act that requires mul-*
7 *tiple Federal authorizations, the Commission, with input*
8 *from any Federal or State agency considering an aspect*
9 *of the application, shall track and make available to the*
10 *public on the Commission’s website information related to*
11 *the actions required to complete the Federal authorizations.*
12 *Such information shall include the following:*

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

15 *(2) A list of all the actions required by each ap-*
16 *licable agency to complete permitting, reviews, and*
17 *other actions necessary to obtain a final decision on*
18 *the application.*

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

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

23 *(5) In the event that an action is still pending*
24 *as of the expected date of completion, a brief expla-*
25 *nation of the reasons for the delay.*

1 **SEC. 3. PIPELINE SECURITY.**

2 *In considering an application for an authorization*
3 *under section 3 of the Natural Gas Act or a certificate of*
4 *public convenience and necessity under section 7 of such*
5 *Act, the Federal Energy Regulatory Commission shall con-*
6 *sult with the Administrator of the Transportation Security*
7 *Administration regarding the applicant's compliance with*
8 *security guidance and best practice recommendations of the*
9 *Administration regarding pipeline infrastructure security,*
10 *pipeline cybersecurity, pipeline personnel security, and*
11 *other pipeline security measures.*

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