

Testimony of

Terry L. Turpin
Director, Office of Energy Projects

Federal Energy Regulatory Commission
888 First Street, N.E. Washington, DC, 20426

Chairman Murkowski, Ranking Member Cantwell, and Members of the Committee:

My name is Terry Turpin and I am the Director of the Office of Energy Projects at the Federal Energy Regulatory Commission. The Office is responsible for taking a lead role in carrying out the Commission's responsibilities in siting infrastructure projects including: (1) licensing, administration, and safety of non-federal hydropower projects; (2) authorization of interstate natural gas pipelines and storage facilities; and (3) authorization of liquefied natural gas (LNG) terminals.

I appreciate the opportunity to appear before you to discuss federal infrastructure permitting and the Commission's processes for conducting environmental reviews required under the National Environmental Policy Act. As a member of the Commission's staff, the views I express in this testimony are my own, and not necessarily those of the Commission or of any individual Commissioner.

Under both the Federal Power Act (FPA) and the Natural Gas Act (NGA), the Commission acts as the lead agency for the purposes of complying with the National Environmental Policy Act (NEPA). Consistent with its role as lead agency, the Commission has developed processes to engage Indian Tribes, state and federal agencies, and other stakeholders and provide them the opportunity to identify significant issues regarding proposed infrastructure. The Commission's practices allow for a systematic, efficient, and collaborative process, which has resulted in substantial additions to the nation's infrastructure.

I. The Commission's Hydropower Program

The Commission regulates over 1,600 non-federal hydropower projects at over 2,500 dams pursuant to Part I of the FPA. Together, these projects represent about 56 gigawatts of hydropower capacity, which is more than half of all the hydropower capacity in the United States. Together, public and private hydropower capacity total about eight percent of U.S. electric generation capacity.

Under the FPA, non-federal hydropower projects must be licensed by the Commission if they: (1) are located on a navigable waterway; (2) occupy federal land; (3) use surplus water from a federal dam; or (4) are located on non-navigable waters over which Congress has jurisdiction under the Commerce Clause, involve post-1935 construction, and affect interstate or foreign commerce.

The FPA authorizes the Commission to issue licenses for projects within its jurisdiction, and exemptions (which are actually a simpler form of license) for projects that would be located at existing dams or within conduits, as long as these projects meet specific

criteria. Licenses are issued for terms of between 30 and 50 years and may be renewed. Exemptions are perpetual and do not need to be renewed.

The Commission also must ensure compliance with other statutes, each containing its own procedural and substantive requirements, including: the Clean Water Act; the Coastal Zone Management Act; the Endangered Species Act; the Wild and Scenic Rivers Act; and the National Historic Preservation Act.

The Commission has established three licensing processes and allows an applicant to request the process that it believes to be best suited to its individual situation. All of these processes, which involve specified procedural steps, are transparent and involve extensive coordination among the applicant, Commission staff, Indian Tribes, state and federal agencies, and other stakeholders.

The integrated licensing process, which frontloads issue identification and decisions on information needs to the period before an application is filed, is suited to the more complex or controversial cases. The alternative licensing process allows participants significant flexibility to tailor the licensing process in a manner that can work well in their particular case. The traditional licensing process typically works best for less complex or controversial projects and is the process used for exemptions.

The Commission's hydropower processes give stakeholders the opportunity to participate in collaborative, public proceedings, where all significant issues are identified and studied. Commission staff, consistent with the Commission's role as lead agency, develops detailed, thorough environmental analyses, pursuant to the FPA and NEPA. Stakeholders are afforded numerous opportunities to provide the Commission with information, comments, and recommendations. While the Commission's regulations establish detailed procedures, Commission staff may waive regulations or revise procedures where doing so will lead to the more efficient and effective processing of an application.

Statutory requirements also give other agencies a significant role in the licensing process, limiting the Commission's control of the cost and timing of licensing. For example, if a project is located on U.S. lands such as a national forest, section 4(e) of the FPA authorizes the federal land managing agency to impose mandatory conditions to protect those lands. Section 18 of the FPA gives authority to the Secretaries of the Departments of the Interior and Commerce to prescribe fishways. With respect to exemptions, section 30(c) of the FPA allows federal and state agencies to impose conditions to protect fish and wildlife resources. In addition, section 401(a)(1) of the Clean Water Act precludes the Commission from issuing a final license for a hydroelectric project until the project has first obtained a water quality certification, or a waiver thereof, and requires the Commission to adopt all conditions contained in the water quality certification. There are instances where Commission staff has completed its analysis of a hydroelectric project but final Commission action on the application has been delayed, sometimes for years, awaiting the issuance by a state, acting under delegated federal authority, of a water quality certification under the Clean Water Act.

In addition to licensing projects and issuing exemptions, the Commission is responsible for ensuring compliance with license and exemption conditions during the life of regulated projects. The Commission also maintains a strong, effective program of inspecting jurisdictional dams to ensure that human life and property are kept safe.

II. The Commission's Natural Gas Program

The Commission is responsible for authorizing the construction and operation of interstate natural gas pipeline and storage facilities under section 7 of the NGA and, under section 3 of the NGA, for authorizing the construction and operation of facilities necessary for either the import or export of natural gas by pipeline, or by sea as LNG. Authorizations for the import or export of the commodity of natural gas, including LNG, are issued by the Department of Energy.

As part of its responsibilities, the Commission conducts both a non-environmental and an environmental review of proposed natural gas projects. The non-environmental review focuses on a project's engineering design, market demand, costs, rates, and consistency with the Commission's regulations and policies. Under the NGA, the Commission acts as the lead agency for the purposes of coordinating all applicable federal authorizations, including, but not limited to, those issued under the Endangered Species Act, National Historic Preservation Act, Clean Water Act, Clean Air Act, and Coastal Zone Management Act, as well as for the purposes of complying with NEPA. Congress has instructed each federal and state agency considering an aspect of an application for federal authorization to work with the Commission and to comply with the deadlines established by the Commission, unless a schedule is otherwise established by federal law. Commission staff establishes a publicly noticed schedule for all decisions or actions taken by other federal agencies and/or state agencies acting under delegated federal authority.

The environmental review, pursuant to NEPA, is carried out through a process that encourages cooperation from federal, state, and local agencies and that provides for the input of other interested stakeholders. There are several distinct phases in the Commission's review process for interstate natural gas facilities under sections 3 and 7 of the NGA:

- Project Preparation: the project sponsor identifies customers and markets, defines a proposed project, and identifies potentially affected federal and state agencies and Indian Tribes in the project area, prior to formally engaging Commission staff;
- Pre-Filing Review: Commission staff begins working on the environmental review and engages with stakeholders, including agencies, with the goal of identifying and resolving issues before the filing of an application;
- Application Review: the project sponsor files an application with the Commission under NGA section 7 for interstate pipeline and storage facilities and/or under NGA section 3 for import or export facilities. Commission staff prepares an environmental review document, analyzes the non-environmental aspects of projects related to the public interest determination, and prepares an order for Commission consideration; and
- Post-Authorization Compliance: Following issuance of a Commission order approving a project, Commission staff works with the project sponsor and stakeholders, including agencies and Tribes, to ensure compliance during construction with environmental and other conditions included in the order.

The Commission's natural gas project review processes are thorough, efficient, and have resulted in the timely approval of interstate natural gas pipelines, LNG facilities, and facilities at our international borders for the import or export of natural gas. Since 2000, the Commission has authorized nearly 18,000 miles of interstate natural gas transmission pipeline totaling more than 159 billion cubic feet per day of transportation capacity, over one trillion cubic feet of interstate storage capacity, and 23 facility sites for the import and export of LNG. Over the past ten years, the Commission has also issued 15 NGA section 3 authorizations and Presidential Permits for border crossing facilities. Since August when the Commission regained a quorum, the agency has authorized more than 12 billion cubic feet per day of additional pipeline capacity and more than 1,300 miles of pipeline.

III. Recent Efforts in Process Improvements

The Fixing America's Surface Transportation Act was enacted on December 4, 2015. Title 41 of that act (FAST-41) established new coordination and oversight procedures for infrastructure projects being reviewed by federal agencies. Executive Order 13807, "*Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects*," issued August 15, 2017, establishes a federal government policy of providing public transparency, agency accountability, and timeliness regarding environmental review and authorization decisions.

To a great extent, the processes envisioned by both FAST-41 and Executive Order 13807 parallel the Commission's own processes to improve early consultation and to increase transparency of project review. Commission staff is committed to working with all federal agencies to assist in the successful implementation of these goals and to ensure the most effective processing of energy infrastructure matters before the Commission.

Since the passage of the FAST-41, Commission staff has regularly participated in various FAST-41 working groups, including the Interagency Working Group, the Fees Working Group, and the Information Technology Working Group, as well as all meetings of the Council and of agency Chief Environmental Review Permitting Officers. Further, staff has assisted in the preparation of a number of FAST-41 related documents, including: Office of Management and Budget and the Council on Environmental Quality Implementation Guidance (January 13, 2017); Best Management Practices Report (January 18, 2017 and December 6, 2017); Performance Targets Report (January 18, 2017); and Quarterly Assessments (July and November 2017), and an Annual Report to Congress (April 15, 2017). Commission staff is also participating with the working groups set up by the Office of Management and Budget and the Council on Environmental Quality under Executive Order 13807.

IV. Conclusion

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