

118TH CONGRESS
1ST SESSION

S. 988

To provide for coordination by the Federal Energy Regulatory Commission of the process for reviewing certain natural gas projects under the jurisdiction of the Commission, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 27, 2023

Mr. HOEVEN (for himself and Mr. SULLIVAN) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To provide for coordination by the Federal Energy Regulatory Commission of the process for reviewing certain natural gas projects under the jurisdiction of the Commission, 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 Projects Act”.

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

8 (a) **DEFINITIONS.**—In this section:

1 (1) CERTIFICATE OF PUBLIC CONVENIENCE
2 AND NECESSITY.—The term “certificate of public
3 convenience and necessity” means a certificate of
4 public convenience and necessity issued under sec-
5 tion 7 of the Natural Gas Act (15 U.S.C. 717f).

6 (2) COMMISSION.—The term “Commission”
7 means the Federal Energy Regulatory Commission.

8 (3) FEDERAL AUTHORIZATION.—The term
9 “Federal authorization” has the meaning given the
10 term in section 15(a) of the Natural Gas Act (15
11 U.S.C. 717n(a)).

12 (4) NEPA REVIEW.—The term “NEPA review”
13 means the process of reviewing a proposed Federal
14 action under section 102 of the National Environ-
15 mental Policy Act of 1969 (42 U.S.C. 4332).

16 (5) PROJECT-RELATED NEPA REVIEW.—The
17 term “project-related NEPA review” means any
18 NEPA review required to be conducted with respect
19 to the issuance of—

20 (A) an authorization under section 3 of the
21 Natural Gas Act (15 U.S.C. 717b); or

22 (B) a certificate of public convenience and
23 necessity.

24 (b) COMMISSION NEPA REVIEW RESPONSIBIL-
25 ITIES.—In acting as the lead agency under section

1 15(b)(1) of the Natural Gas Act (15 U.S.C. 717n(b)(1))
2 for the purposes of complying with the National Environ-
3 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with
4 respect to an authorization under section 3 of the Natural
5 Gas Act (15 U.S.C. 717b) or a certificate of public conven-
6 ience and necessity, the Commission shall, in accordance
7 with this section and other applicable Federal law—

8 (1) be the only lead agency;

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

17 (3) take such actions as are necessary and
18 proper to facilitate the expeditious resolution of
19 project-related NEPA review.

20 (c) DEFERENCE TO COMMISSION.—In making a deci-
21 sion with respect to a Federal authorization required with
22 respect to an application for an authorization under sec-
23 tion 3 of the Natural Gas Act (15 U.S.C. 717b) or a cer-
24 tificate of public convenience and necessity, each agency
25 shall give deference, to the maximum extent authorized

1 by law, to the scope of the project-related NEPA review
2 that the Commission determines to be appropriate.

3 (d) PARTICIPATING AGENCIES.—

4 (1) IDENTIFICATION.—Not later than 30 days
5 after receiving an application for an authorization
6 under section 3 of the Natural Gas Act (15 U.S.C.
7 717b) or a certificate of public convenience and ne-
8 cessity, the Commission shall identify any Federal or
9 State agency, local government, or Indian Tribe
10 that—

11 (A) may issue a Federal authorization with
12 respect to the application; or

13 (B) is required by Federal law to consult
14 with the Commission in conjunction with the
15 issuance of an authorization under section 3 of
16 that Act (15 U.S.C. 717b) or a Federal author-
17 ization required for the certificate of public con-
18 venience and necessity.

19 (2) INVITATION.—

20 (A) IN GENERAL.—Not later than 45 days
21 after receiving an application for an authoriza-
22 tion under section 3 of the Natural Gas Act (15
23 U.S.C. 717b) or a certificate of public conven-
24 ience and necessity, the Commission shall invite
25 any agency identified under paragraph (1) to

1 participate in the review process for the applica-
2 ble Federal authorization.

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

8 (3) DESIGNATION AS PARTICIPATING AGEN-
9 CIES.—Not later than 60 days after the Commission
10 receives an application for an authorization under
11 section 3 of the Natural Gas Act (15 U.S.C. 717b)
12 or a certificate of public convenience and necessity,
13 the Commission shall designate an agency identified
14 under paragraph (1) as a participating agency with
15 respect to an application for an authorization under
16 section 3 of that Act (15 U.S.C. 717b) or a certifi-
17 cate of public convenience and necessity unless the
18 agency informs the Commission, in writing, by the
19 deadline established pursuant to paragraph (2)(B),
20 that the agency—

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

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

1 (C) does not intend to submit comments
2 for the record for the project-related NEPA re-
3 view conducted by the Commission.

4 (4) EFFECT OF NON-DESIGNATION.—

5 (A) EFFECT ON AGENCY.—Any agency
6 that is not designated as a participating agency
7 under paragraph (3) with respect to an applica-
8 tion for an authorization under section 3 of the
9 Natural Gas Act (15 U.S.C. 717b) or a certifi-
10 cate of public convenience and necessity may
11 not request or conduct a NEPA review that is
12 supplemental to the project-related NEPA re-
13 view conducted by the Commission, unless the
14 agency—

15 (i) demonstrates that such review is
16 legally necessary for the agency to carry
17 out responsibilities in considering an as-
18 pect of an application for a Federal au-
19 thorization; and

20 (ii) requires information that could
21 not have been obtained during the project-
22 related NEPA review conducted by the
23 Commission.

24 (B) COMMENTS; RECORD.—The Commis-
25 sion shall not, with respect to an agency that is

1 not designated as a participating agency under
2 paragraph (3) with respect to an application for
3 an authorization under section 3 of the Natural
4 Gas Act (15 U.S.C. 717b) or a certificate of
5 public convenience and necessity—

6 (i) consider any comments or other in-
7 formation submitted by the agency for the
8 project-related NEPA review conducted by
9 the Commission; or

10 (ii) include any such comments or
11 other information in the record for the
12 project-related NEPA review.

13 (e) SCHEDULE.—

14 (1) DEADLINE FOR FEDERAL AUTHORIZA-
15 TIONS.—The deadline for a Federal authorization
16 required with respect to an application for an au-
17 thorization under section 3 of the Natural Gas Act
18 (15 U.S.C. 717b) or a certificate of public conven-
19 ience and necessity set by the Commission under
20 section 15(c)(1) of the Natural Gas Act (15 U.S.C.
21 717n(c)(1)) shall be not later than 90 days after the
22 date on which the Commission completes the appli-
23 cable project-related NEPA review, unless an appli-
24 cable schedule is otherwise established by Federal
25 law.

1 (2) CONCURRENT REVIEWS.—Each Federal and
2 State agency—

3 (A) that may consider an application for a
4 Federal authorization required with respect to
5 an application for an authorization under sec-
6 tion 3 of the Natural Gas Act (15 U.S.C. 717b)
7 or a certificate of public convenience and neces-
8 sity shall formulate and implement a plan for
9 administrative, policy, and procedural mecha-
10 nisms to enable the agency to ensure completion
11 of Federal authorizations in compliance with
12 the schedule established by the Commission
13 under section 15(c)(1) of the Natural Gas Act
14 (15 U.S.C. 717n(c)(1)); and

15 (B) in considering an aspect of an applica-
16 tion for a Federal authorization required with
17 respect to an application for an authorization
18 under section 3 of the Natural Gas Act (15
19 U.S.C. 717b) or a certificate of public conven-
20 ience and necessity, shall—

21 (i) develop and implement a plan to
22 enable the agency to comply with the
23 schedule;

24 (ii) carry out the obligations of the
25 agency under applicable law concurrently,

1 and in conjunction with, the project-related
2 NEPA review conducted by the Commis-
3 sion, and in compliance with the schedule;

4 (iii) transmit to the Commission a
5 statement—

6 (I) acknowledging receipt of the
7 schedule; and

8 (II) describing the plan developed
9 under clause (i); and

10 (iv) not less frequently than once
11 every 90 days, transmit to the Commission
12 a report describing the progress made in
13 considering the application for a Federal
14 authorization.

15 (3) FAILURE TO MEET DEADLINE.—

16 (A) IN GENERAL.—If a Federal or State
17 agency, including the Commission, fails to meet
18 a deadline for a Federal authorization required
19 in the applicable schedule established by the
20 Commission under section 15(c)(1) of the Nat-
21 ural Gas Act (15 U.S.C. 717n(c)(1)), not later
22 than 5 days after the deadline, the head of the
23 relevant Federal agency (including, in the case
24 of a failure by a State agency, the Federal

1 agency overseeing the delegated authority)
2 shall—

3 (i) notify Congress and the Commis-
4 sion of the failure; and

5 (ii) include in that notification a de-
6 scription of the recommended implementa-
7 tion plan to ensure completion of the ac-
8 tion to which the deadline applied, unless
9 the Commission deems the requirement to
10 complete the action has been waived.

11 (B) REQUIREMENT.—In cases in which a
12 requirement has not been waived under clause
13 (ii) of subparagraph (A), not later than 5 days
14 after the date on which the Commission receives
15 the notification under that subparagraph, the
16 Commission shall—

17 (i) accept the recommended implemen-
18 tation plan; or

19 (ii) if the Commission does not accept
20 the recommended implementation plan, es-
21 tablish a revised schedule for completion of
22 the action and notify the head of the rel-
23 evant Federal agency.

24 (f) CONSIDERATION OF APPLICATIONS FOR FEDERAL
25 AUTHORIZATION.—

1 (1) ISSUE IDENTIFICATION AND RESOLU-
2 TION.—

3 (A) IDENTIFICATION.—Federal and State
4 agencies that may consider an aspect of an ap-
5 plication for a Federal authorization shall iden-
6 tify, as early as practicable, any issues of con-
7 cern that may delay or prevent an agency
8 from—

9 (i) working with the Commission to
10 resolve the issues; and

11 (ii) granting the Federal authoriza-
12 tion.

13 (B) ISSUE RESOLUTION.—The Commission
14 may forward any issue of concern identified
15 under subparagraph (A) to the heads of the rel-
16 evant agencies (including, in the case of an
17 issue of concern that is a failure by a State
18 agency, the Federal agency overseeing the dele-
19 gated authority, if applicable) for resolution.

20 (2) REMOTE SURVEYS.—

21 (A) IN GENERAL.—If a Federal or State
22 agency considering an aspect of an application
23 for a Federal authorization requires the person
24 applying for the Federal authorization to sub-
25 mit data, subject to subparagraph (B), the

1 agency shall consider any data gathered by aer-
2 ial or other remote means that the person sub-
3 mits.

4 (B) CONSIDERATION.—Aerial or remote
5 survey data shall be considered under subpara-
6 graph (A) in cases in which property access is
7 not permitted or available and therefore onsite
8 inspection is not possible at the time of the ap-
9 plication review.

10 (C) CONDITIONAL APPROVAL.—If appro-
11 priate and necessary for compliance with the
12 mandate of the agency, a Federal or State
13 agency may condition approval for a Federal
14 authorization based in part on data gathered by
15 aerial or remote means on the verification of
16 the data by subsequent onsite inspection.

17 (3) APPLICATION PROCESSING.—The Commis-
18 sion, and Federal and State agencies, may allow a
19 person applying for a Federal authorization to fund
20 a third-party contractor to assist in reviewing the
21 application for the Federal authorization.

22 (g) ACCOUNTABILITY, TRANSPARENCY, EFFI-
23 CIENCY.—

24 (1) IN GENERAL.—For an application for an
25 authorization under section 3 of the Natural Gas

1 Act (15 U.S.C. 717b) or a certificate of public con-
2 venience and necessity that requires multiple Fed-
3 eral authorizations, the Commission, with input from
4 any Federal or State agency considering an aspect
5 of the application, shall track and make available to
6 the public on the website of the Commission infor-
7 mation relating to the actions required to complete
8 the Federal authorizations.

9 (2) INCLUSIONS.—Information tracked and in-
10 cluded under paragraph (1) shall include the fol-
11 lowing:

12 (A) The schedule established by the Com-
13 mission under section 15(c)(1) of the Natural
14 Gas Act (15 U.S.C. 717n(c)(1)).

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

19 (C) The expected completion date for each
20 action.

21 (D) A point of contact at the agency re-
22 sponsible for each action.

1 (E) In the event that an action is still
2 pending as of the expected date of completion,
3 a brief explanation of the reasons for the delay.

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