

**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
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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.