

Testimony of

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**Committee on Homeland Security and Government Affairs
Permanent Subcommittee on Investigations
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**Hearing on Cutting Through the Red Tape: Oversight of Federal Infrastructure
Permitting and the Federal Permitting Improvement Steering Council.**

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Chairman Portman, Ranking Member Carper, and Members of the Subcommittee:

My name is Jacqueline Holmes, and I am Associate General Counsel for Energy Projects at the Federal Energy Regulatory Commission (Commission). The Office of the General Counsel provides legal and policy advice to the Commission with respect to its responsibility for siting infrastructure projects including: (1) the licensing, administration, and safety of non-federal hydropower projects; (2) the authorization of interstate natural gas pipelines and storage facilities; and (3) the authorization and safety of liquefied natural gas terminals.

I am honored to have been invited to appear before you to discuss federal infrastructure permitting and the Federal Permitting Improvement Steering Council. 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.

I will start by outlining the Commission's hydropower and natural gas programs and then turn to the Federal Permitting Improvement Steering Council.

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 Federal Power Act (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. Hydropower is an essential part of the Nation's energy mix and offers the benefits of an emission-free, renewable, domestic energy source.

Public and private hydropower capacity together total about 8 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, generally of between 30 and 50 years, and may be renewed. Exemptions are perpetual, and thus 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 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, Tribes, state and federal agencies, and other stakeholders.

The integrated licensing process (ILP), 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 (ALP) allows participants significant flexibility to tailor the licensing process in a manner that can work well in a particular case. The traditional licensing process (TLP) 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 the National Environmental Policy Act (NEPA), that address matters of concern to interested entities. 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 cost-effective processing of an application.

Statutory requirements give other agencies a significant role in the licensing process, thus limiting the Commission's control of the cost, timing, and efficiency 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. Further, 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.

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 Natural Gas Act (NGA) and, under section 3 of the NGA, for authorizing the construction and operation of facilities necessary to either the import or export of natural gas by pipeline, or by sea as liquefied natural gas (LNG).

Authorizations for the import or export of the commodity of natural gas, including as 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 Indian tribes 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 and 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.

The Commission's practices allow for a systematic, efficient, and collaborative process, and have, as described above, resulted in substantial additions to the nation's natural gas infrastructure. These results have been facilitated by thorough environmental analyses under NEPA, which have been improved through the Commission's approach in Pre-filing Review and Application Review.

FAST-41

The Fixing America's Surface Transportation Act was enacted on December 4, 2015. Title 41 of the act (FAST-41) established new coordination and oversight procedures for infrastructure projects being reviewed by federal agencies. FAST-41 is intended to:

- improve early consultation and coordination among government agencies;

- increase transparency through the publication of project-specific timetables with completion dates for all federal environmental reviews and authorizations; and
- increase accountability through consultation and reporting on delayed projects.

FAST-41 establishes a governance structure, including the creation of a Federal Permitting Improvement Steering Council (Council), to deal with permitting issues on complex infrastructure projects and to establish best practices for the permitting process. The heads of various cabinet-level departments, as well as the Chairmen of the Commission and the Nuclear Regulatory Commission, are required to designate representatives to the Council. As of February 17, 2017, Terry Turpin, the Director of the Commission's Office of Energy Projects (OEP), is the Commission's designated Councilmember and Heather Campbell, OEP Senior Policy Advisor and the Commission's Federal Preservation Officer, is the Commission's Chief Environmental Review and Permitting Officer (CERPO), a position established by FAST-41.

To be eligible for FAST-41, a proposal must meet the definition of a "covered project" under the statute. As relevant to the Commission, a covered project is one that: (1) involves the construction of a non-federal hydropower facility, interstate natural gas pipeline, or liquefied natural gas terminal that is subject to NEPA; and (2) is likely to require a total investment of more than \$200,000,000. Additional projects can be considered if they are likely to benefit from FAST-41.

To establish an initial inventory of FAST-41 projects, Commission staff identified all projects pending Commission review as of March 3, 2016, that met the definition of a covered project. The Executive Director of the Council then compiled a list of eligible projects from across the federal government and, on September 22, 2016, established an inventory of 34 covered projects, including 13 Commission-jurisdictional projects (4 hydroelectric projects, 7 natural gas pipeline projects, and 2 liquefied natural gas terminal projects), two of which have subsequently been completed. For new projects to be added to the inventory, a sponsor must voluntarily submit a notice for consideration.

Since FAST-41 was enacted, Commission staff has attended all meetings of the Council and of agency CERPOs. In addition, 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. Further, staff has assisted in the preparation of a number of FAST-41 related documents, including: OMB-CEQ Implementation Guidance (January 13, 2017); Best Management Practices Report (January 18, 2017); Performance Targets Report (January 18, 2017); and an Annual Report to Congress (April 15, 2017).

Commission staff has taken additional actions of consulting with other agencies to create a “Coordinated Project Plan” for each of the covered Commission projects; creating project-specific webpages that include timetables and other project information; and updating the Council on the status of projects pending before the Commission. Moreover,

staff has met on a number of occasions with Council staff to discuss both general issues related to the implementation of FAST-41 and specific issues regarding individual projects.

To a great extent, the process established by FAST-41 mirrors the Commission's established transparent, collaborative procedures, resulting in consistency of the Commission's actions with FAST-41's requirements, including those associated with early coordination and consultation. Commission staff is committed to continuing to work with the Council to assist in the successful implementation of FAST-41 and to mesh the new FAST-41 procedures with the Commission's existing procedures, thereby ensuring the most efficient, effective possible processing of energy infrastructure matters before the Commission.

Conclusion

This concludes my remarks. I stand ready to address any questions you may have.