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Presidential Permit Review for Cross-Border Pipelines and Electric Transmission

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Summary

Executive permission in the form of a Presidential Permit has long been required for the construction, connection, operation, and maintenance of certain facilities that cross the United States borders with Canada and Mexico. The constitutional basis for the President's cross-border permitting authority is well established, but questions remain about the manner in which this authority is exercised among the agencies to which it has been delegated. In particular, some Members of Congress and affected stakeholders seek greater clarity about how Presidential Permit applications are reviewed for various kinds of cross-border energy projects. Particular attention is paid to the scope of review and perceived differences in the approaches taken by the State Department, the Department of Energy, and the Federal Energy Regulatory Commission. These agencies have jurisdiction over cross-border oil pipelines, electric transmission lines, and natural gas pipelines, respectively.

In the past, with few exceptions, the Presidential Permits issued for cross-border pipelines or electric transmission lines involved projects extending a relatively short distance into a U.S. border state before connecting to some existing facility. However, over the last decade, much longer cross-border projects have been approved, including the Keystone and Alberta Clipper pipelines. These projects are hundreds of miles long and cross multiple states. The larger scope of these approved projects, and subsequent permit applications for other large projects—especially the Keystone XL pipeline—have increased national attention to the Presidential Permit process.

Analysis of historical Presidential Permit reviews among the three permitting agencies shows that, notwithstanding differences in their permit authorities under the various executive orders, their reviews are driven largely by the National Environmental Policy Act (NEPA)—and the same NEPA requirements apply to all three. Faced with Presidential Permit applications for energy projects of similar physical scope, the agencies appear to perform NEPA reviews of similar proportion. Very short, smaller projects are generally reviewed more narrowly and quickly, whereas multi-state projects of large capacity are subject to more expansive environmental review and tend to face much greater public scrutiny and comment—regardless of which agency has jurisdiction.

In response to concerns about delays in the review of the Keystone XL permit application, several legislative proposals in the 114th Congress have sought to change some aspect of the Presidential Permit process. Most notable was the Keystone XL Pipeline Approval Act (S. 1), which was passed in Congress but vetoed by President Obama. Subsequent legislative proposals remain active, including the American Energy Renaissance Act of 2015 (S. 791 and H.R. 1487) and the North American Energy Infrastructure Act (S. 1228).

As long as agencies apply NEPA to Presidential Permitting decisions, changes to the delineation of, or jurisdiction over, the border-crossing portion of large projects for permitting purposes may not change the scope of project environmental review. The imposition of decision deadlines on the permitting agencies after NEPA review is complete, either for national interest or public interest determination, could provide greater process certainty to stakeholders. However, the overall project review would still be contingent on the completion of NEPA review. Thus, the effects of legislative proposals to change cross-border infrastructure permitting on the review or approval of future border crossing energy infrastructure projects are open to debate.

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Introduction

For decades, executive permission in the form of a Presidential Permit has been required for the construction, connection, operation, and maintenance of certain facilities that cross the United States borders with Canada and Mexico. The constitutional basis for the President's cross-border permitting authority was examined in a prior CRS report.[1] However, questions remain about the manner in which this authority is exercised among the agencies to which it has been delegated. In particular, some Members of Congress and affected stakeholders seek greater clarity about how Presidential Permit applications are reviewed for various kinds of cross-border energy projects, including differences or similarities in agency approaches related to evaluating environmental impacts and making determinations about the national or public interest.

In the past, with few exceptions, the Presidential Permits issued for cross-border pipelines or electric transmission lines involved projects extending a relatively short distance into a U.S. border state before connecting to some existing facility (e.g., a refinery in Texas or a power plant in Arizona). However, over the last decade, much longer cross-border projects have been approved, including TransCanada's Keystone and Enbridge Energy's Alberta Clipper pipelines. In operation since 2010, both projects transport oil sands crude from Alberta, Canada, deep into the United States via pipelines that are hundreds of miles long and cross multiple states. The scope of these approved projects, and subsequent permit applications for other projects, began to increase national attention on the Presidential Permit process. National attention on Presidential Permits increased further with TransCanada's proposal to build the Keystone XL pipeline—a project for which the permit application is still pending.

In response to perceived delays in the review of the Keystone XL permit application, several legislative proposals in the 114th Congress have sought to change some specific or general aspects of the Presidential Permit process. Most notable was the Keystone XL Pipeline Approval Act (S. 1), which was passed in Congress but vetoed by President Obama. Subsequent legislative proposals remain active, including the American Energy Renaissance Act of 2015 (S. 791 and H.R. 1487) and the North American Energy Infrastructure Act (S. 1228). Debate about these proposals continues.

This report focusses on the Presidential Permit review processes for cross-border energy infrastructure as implemented by these agencies:

- **The Department of State** for pipelines and similar facilities that transport liquids such as petroleum, petroleum products, and other hazardous liquids;
- **The Federal Energy Regulatory Commission (FERC)** for natural gas pipelines and associated facilities; and
- **The Department of Energy (DOE)** for electricity transmission lines and associated facilities.

[1] See CRS Report R43261, *Presidential Permits for Border Crossing Energy Facilities*, by (name redacted) and (name re dacted), portions of which have been incorporated into this report.

This report compares practices among these three agencies in terms of project scope, environmental review, and final permit decisions. It includes a discussion of recent efforts by Congress to change those permitting processes.

Overview of Presidential Permitting Processes

The State Department, FERC, and DOE each make their decisions regarding Presidential Permit applications largely within the context of their own interpretation of directives in a series of executive orders. The State Department makes its permitting decisions primarily in accordance with directives in Executive Order 11423, as amended by Executive Order 13337.[2] FERC and DOE make permitting decisions in accordance with Executive Order 10485, as amended by Executive Order 12038.[3] Broadly speaking, each executive order requires the respective agency to do the following:

- Gather necessary project-specific information from the applicant;
- Seek input from specific outside federal agencies; and
- Decide whether to seek input from additional local, state, tribal, or federal agencies or from members of the public.

Under the applicable executive order, each agency is required to issue a Presidential Permit if, after evaluating all relevant project information, the agency determines that the project would "serve the national interest" (pursuant to E.O. 13337) or be "consistent with the public interest" (pursuant to E.O. 10485). A permit must include any conditions that the permitting agency identifies as necessary to ensure that the project would, in fact, meet the public or national interest standard. (For the sake of brevity, the phrase "public or national interest" as it is used later in this report refers to the standard that is applied or procedures that are implemented by the authorized agency under the applicable executive order to determine whether a proposal will be "consistent with the public interest" or "serve the national interest." It does not mean to suggest that such standards or procedures are the same for each agency.)

[2] See Executive Order 11423, "Providing for the Performance of Certain Functions Heretofore Performed by the President with Respect to Certain Facilities Constructed and Maintained on the Borders of the United States," 33 *Federal Register* 11741, August 20, 1968; and Executive Order 13337, "Issuance of Permits with Respect to Certain Energy-Related Facilities and Land Transportation Crossings on the International Boundaries of the United States," 69 *Federal Register* 25299, May 5, 2004.

[3] Executive Order 10485, "Providing for the Performance of Certain Functions Heretofore Performed by the President with Respect to Electric Power and Natural Gas Facilities Located on the Borders of the United States," 18 *Federal Register* 5397, September 3, 1953. Executive Order 10485 empowered the Federal Power Commission (FPC) to receive applications for and to issue Presidential Permits for cross-border electric facilities. The Department of Energy Organization Act of 1977 (P.L. 95-91, 42 U.S.C. §4101 note) eliminated the FPC, transferring its functions to DOE and FERC. As a result, DOE took over the FPC's Presidential Permit authority for border crossing facilities under Executive Order 10485. Executive Order 12038, "Relating to certain functions transferred to the Secretary of Energy by the Department of Energy Organization Act," 43 *Federal Register* 4957, February 3, 1978, supplemented the creation of DOE by assigning various duties to the agency that had previously been assigned elsewhere. Section 2 transferred functions assigned to the Federal Energy Administration in E.O. 10485 to DOE. The authority to issue Presidential Permits for natural gas pipeline border crossings was subsequently transferred to FERC in 2006 via DOE Delegation Order No. 00-004.00A (available at http://www.ferc.gov/industries/electric/indus-act/siting/doe-delegation.pdf).

Depending on the type of project- and site-specific impacts of the project, additional federal requirements may apply to the proposal. For example, natural gas pipelines are subject to requirements established by or pursuant to the Natural Gas Act.

Each agency authorized to issue Presidential Permits informs its decisionmaking regarding such permits using information gathered in accordance with its procedures implementing the National Environmental Policy Act of 1969 (NEPA).[4] In part, NEPA requires federal agencies to ensure that the environmental impacts of an action are identified and taken into consideration before making a final agency decision about the action. Permit conditions, such as mitigation measures and additional compliance requirements, are also generally identified during the NEPA review. For example, during the NEPA review, an agency may identify construction procedures or mitigation measures that the applicant must implement to ensure compliance with other applicable federal law, such as the Endangered Species Act or Clean Water Act.

Since each agency is required to identify conditions under which a proposal must be implemented, it is rare that an agency denies a permit application. Instead, the permitting process is generally used to determine *how* a project must be implemented to comply with federal law (and meet the national or public interest standard) rather than *whether* it can be implemented.[5]

Agency Implementation of the Executive Orders

Each agency's permitting process involves the identification and analysis of project-specific impacts of a proposal. That information is gathered in accordance with executive order directives, the agency's NEPA implementation process, and any other applicable federal requirements. Once a Presidential Permit is issued, the applicant (then permittee) must site, construct, operate, and maintain the border-crossing facilities in accordance with conditions specified in the permit. As a result, subsequent modifications to the facility related to its siting, construction, operation, or maintenance may require additional authorization from the permitting agency.

Key Elements of the NEPA Review Process

As stated above, each permitting agency identifies the impacts of a proposed project and conditions necessary to ensure it will meet the required public or national interest standards, largely within the context of identifying environmental impacts pursuant to NEPA. Regulations implementing NEPA, broadly applicable to all federal agencies, were promulgated by the Council on Environmental Quality (CEQ) in 1978.[6] In those regulations, each federal agency was required to adopt the CEQ regulations, supplement them as necessary to include procedures relevant to that agency's authority, and ensure that those procedures implementing NEPA are integrated into the agency's broader decisionmaking procedures.[7] FERC, DOE, and the State Department

[4] 42 U.S.C. §4321 *et seq*.

[5] In 2012, the State Department did deny TransCanada's 2008 application for a Presidential Permit for the Keystone XL pipeline. However, the department noted that its denial was due to its inability to complete the national interest determination process within a 60-day deadline established in P.L. 112-78 (see discussion in the "Past Legislative Proposals" section, below).

[6] See Council on Environmental Quality, "Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act," in 40 C.F.R. Parts 1500-1508 (43 *Federal Register* 55990, November 28, 1978).

[7] See directives included in 40 C.F.R. §§1505.1 and 1507.3.

subsequently did so.[8] The resulting agency-specific NEPA review process is used to identify any potentially relevant issues or impacts that must be considered during the decisionmaking process.

Procedures for determining the scope of the environmental review and the type of impacts analyzed during that review are delineated in both the CEQ and the individual agency NEPA regulations. NEPA requires federal agencies to provide a detailed environmental impact statement (EIS) for "major federal actions significantly affecting the quality of the human environment."[9] If the agency is uncertain whether a proposal would have significant impacts, it may prepare an environmental assessment (EA) to determine if an EIS is necessary or a finding of no significant impact (FONSI) may be issued. Federal agencies may also identify categories of actions they are authorized to undertake that have been found to have no significant effect on the environment. Such actions are categorically excluded from the need to prepare an EIS or EA and are, hence, broadly referred to as "categorical exclusions" (CEs or CATEXs).[10]

Given the various potential types of review required under NEPA (i.e., preparation of an EIS or EA or approval as a CE), the scope of project-specific information that will be used to inform an agency's public or national interest determination depends on whether the proposal will "significantly" affect the environment. That determination must be based upon each agency's evaluation of these effects of the proposal:

- **Direct effects.** Impacts that are caused by the project and occur at the same time and place[11] (e.g., impacts directly associated with the construction and operation of the cross-border facilities).
- **Indirect effects.** Impacts that are caused by the action and are later in time or farther removed in distance but still reasonably foreseeable.[12]
- **Cumulative effects.** Impacts on the environment that result from the incremental impacts of the action when added to other past, present, or reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes that other action.[13]

The definitions of these categories of impacts mean that, although a Presidential Permit may be for cross-border facilities, the scope of environmental review of domestic impacts is not limited to the evaluation of impacts that occur only at the border.[14] With few exceptions, each agency has determined that it must evaluate the impacts of an entire project within the United States—from the border to its eventual connection in U.S. territory. For most projects, the consideration of direct and indirect impacts involves an evaluation of all new facilities that will be built as a result of the cross-border facilities, including other facilities constructed in the United States (such as a new power plant being fueled by, and built in conjunction with, a new cross-border natural gas

[8] DOE regulations implementing NEPA are in 10 C.F.R. Part 1021; FERC regulations are in 18 C.F.R. Part 380; the State Department regulations are in 22 C.F.R. Part 161.

[9] See NEPA §102(2)(C); 42 U.S.C. §4332(2)(C). Of note, CEQ defines "federal actions" subject to NEPA to include actions that require federal agency approvals via a permit or other regulatory approval (see 40 C.F.R. §1508.18).

[10] Each agency's regulations implementing NEPA are required to provide for "extraordinary circumstances" in which a normally excluded action may have significant environmental effect (see 40 C.F.R. § 1508.4).

[11] 40 C.F.R. §1508.8(a).

[12] 40 C.F.R. §1508.8(b).

[13] 40 C.F.R. §1508.7.

[14] This report does not address the extent to which a project's impacts in Mexico or Canada may be evaluated.

pipeline). Although the permitting agency may have no authority to control those impacts—other than denying or conditioning the permit—NEPA obligates each agency to be aware of them and demonstrate that those impacts were fully considered in its decisionmaking process.

For any given Presidential Permit application, interested stakeholders may disagree with the permitting agency's decision regarding exactly what constitutes direct, indirect, or cumulative impacts. Such disagreements may relate to how far "upstream" or "downstream" from the project the agency must evaluate impacts. For example, some may argue that approving a cross-border pipeline may induce incremental production of oil or natural gas and that, hence, environmental impacts associated with the development and production of that oil or gas should be evaluated (e.g., the potential for incremental water use or greenhouse gas emissions, among other impacts). Others argue that such impacts are outside the control and responsibility of the permitting agency and should not have to be reviewed. Each agency evaluates project-specific impacts that are reasonably foreseeable. A host of complex factors may be relevant to an agency's determination of the impacts it will consider.

As noted above, NEPA requires an agency to review a proposal's potential to affect the quality of the human environment. The CEQ regulations define the "human environment" to include the natural and physical environment and the relationship of people with that environment, which may include economic or social effects.[15] As DOE, FERC, and the State Department implement NEPA for their Presidential Permit process, project impacts assessed include impacts to cultural or historical resources and those associated with project safety and security (i.e., impacts potentially subject to requirements established under laws other than NEPA). That is, each agency uses the NEPA process to evaluate potential project impacts beyond those that may be identified as "environmental."

Economic or social effects are not intended by themselves to require preparation of an EIS. However, when an EIS is prepared, and economic or social and natural or physical environmental effects are interrelated, then the NEPA document must discuss all of these effects on the human environment.[16] For pipelines and electric transmission lines, this generally means a review of construction and operational issues related to construction methods, safety, and reliability. It also includes the proposal's direct and indirect impacts on geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality (including potential greenhouse gas emissions), noise, safety, and socioeconomics. For oil or natural gas pipelines, these analyses are prepared in cooperation with the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration.

Depending on the location of the project and the resources affected, a given project may have wide-ranging impacts that are also subject to an array of local, tribal, state, and federal law. The identification of such requirements may be useful to the permitting agency to ensure that the cross-border project would result in the construction and operation of facilities in the United States that comply with applicable state and federal environmental and safety requirements. Generally, the final EIS or FONSI for a cross-border pipeline or electric transmission line would identify other requirements the applicant must meet to obtain a Presidential Permit (e.g., pipeline safety regulations), as well as any other state or federal approvals required for other segments of

[15] 40 C.F.R. §1508.14.

[16] 40 C.F.R. §1508.14.

the project (e.g., those established under the Clean Water Act, Endangered Species Act, or National Historic Preservation Act). Overall, this process may result in federal approvals being processed more quickly but may blur the distinction between procedures that must be completed to ensure compliance with NEPA and actions that must be taken to ensure compliance with other laws related to the construction and operation of the entire project.

Once all project impacts are identified, each agency then determines what, if any, conditions must be included in the permit to ensure that the entire project is constructed, operated, connected, and maintained in a way that meets the agency's public or national interest standard. As a result, FERC, DOE, and the State Department have rarely denied permits based on project-specific impacts identified during the NEPA review process. Instead, each agency has generally specified conditions under which the proposal could be approved (i.e., the permit could be issued).

Agency-Specific Procedures

Each agency authorized to issue Presidential Permits for cross-border energy facilities has discretion to determine whether the construction and operation of those facilities will meet its respective public or national interest standard, subject to judicial review.[17] Each agency considers policy issues and other factors unique to the commodity of import or export (e.g., environmental or economic issues related to oil versus electricity imports). With respect to the construction and operation of the facilities themselves, the scope of each agency's review generally depends on the size and scope of the proposed project (e.g., the extent to which the construction of the cross-border facilities will result in the construction of any new pipelines, transmission lines, or related facilities in the United States).

State Department (Petroleum Products and Hazardous Liquids)

Executive Orders 11423 and 13337 direct the State Department to issue Presidential Permits for projects that "serve the national interest." The orders do not define the phrase "national interest," nor do they direct the State Department to evaluate specific factors before issuing a Presidential Permit. However, Executive Order 13337 does require the State Department to refer the application and pertinent project information to and request the views of the Attorney General; Administrator of the Environmental Protection Agency; the Secretaries of Defense, the Interior, Commerce, Transportation, Energy, and Homeland Security, or the heads of those departments or agencies with relevant authority or responsibility over relevant elements of the proposed project; and, for applications concerning the border with Mexico, the U.S. Commissioner of the International Boundary and Water Commission.[18]

In its interpretation of the executive order's directive, the State Department has asserted that, consistent with the President's broad discretion in the conduct of foreign affairs, it has significant discretion in deciding the factors it will examine when making a national interest determination.[19] In the past, the State Department stated that the purpose of its permitting process is to consider the application in terms of how a proposed project would serve the national interest, taking into

[17] See discussion of legal issues in CRS Report R43261, *Presidential Permits for Border Crossing Energy Facilities*, by (name redacted) and (name redacted).

[18] See E.O. 13337, §1(b)(ii).

[19] See U.S. Department of State, *Final Supplemental Environmental Impact Statement Keystone XL Project*, p 1.3-2.

account the proposal's potential effect on energy security, environmental and cultural resources, the economy, and foreign policy.[20] More specifically, apart from environmental considerations identified during the NEPA process, the State Department has identified the following as issues it has considered in past decisions:

- The impacts the proposal would have on the diversity of supply and security of transport pathways for crude oil imported to the United States;
- The impact of a cross-border facility on the relations with the country to which it connects;
- The stability of various foreign suppliers of crude oil and the ability of the United States to work with those countries to meet overall environmental and energy security goals;
- The impact of the proposal on broader foreign policy objectives, including a comprehensive strategy to address climate change, bilateral relations with neighboring countries, and energy security;
- The potential economic benefits to the United States of constructing and operating the proposed project; and
- The relationship between the proposed project and goals to reduce reliance on fossil fuels and to increase use of alternative and renewable energy sources.[21]

While the State Department has identified these economic and strategic issues as potentially relevant to its national interest determination, project-specific issues identified during the NEPA process (e.g., the size of the project and types of resources potentially affected by it) are likely to affect the scope of issues the State Department will evaluate and the time it takes it to make that evaluation.

State Department regulations implementing NEPA identify issuance of a permit for pipeline construction under Executive Order 11423 as an action that normally requires an EA.[22] Its NEPA regulations do not explicitly list actions that may require an EIS or be processed as a CE. Most cross-border oil pipeline facilities authorized by the State Department have involved projects that extend a relatively short distance into a border state. Most Presidential Permits for such projects have involved the preparation of an EA resulting in a FONSI.[23] It was not until 2006 that the State Department determined that a proposed cross-border oil pipeline project would require an EIS. Since then, two additional pipeline proposals have involved the preparation of an EIS.

The three pipelines that have required preparation of an EIS are TransCanada's Keystone and Keystone XL pipelines and Enbridge Energy's Alberta Clipper. All three transport (or propose to transport) oil sands crude[24] from Alberta, Canada, into the United States and extend across

[20] Ibid.

[21] Ibid.

[22] See 22 C.F.R. §161.7(c)(1).

[23] See, for example, the U.S. Department of State, *Finding of No Significant Impact*, May 13, 2013, http://www.vantagepipeline.state.gov/documents/Vantage%20FONSI_2013%2005%2013_FINAL.pdf

[24] When referring to the oil produced in Alberta, the terms "oil sands" and "tar sands" are often used interchangeably. Opponents of the resource's development often use the term "tar sands," which arguably carries a negative connotation; proponents typically refer to the material as oil sands. The use of oil sands in this report is not intended to reflect a (continued...)

multiple states. As the footprint of such pipeline systems grows, so does the list of potential direct, indirect, and cumulative impacts and the public attention to the project, both in favor and opposed. Whereas past Presidential Permits were for pipeline systems that may have totaled less than a few hundred miles, the Keystone and Keystone XL (as it is currently proposed) total approximately 1,086 and 875 miles, respectively. It appears that these recent applications have raised issues that other Presidential Permits did not, such as issues related to the production of the oil in Canada, concern regarding potential spills far removed from the border, and life-cycle greenhouse gas emissions associated with the production and use of oil sands crude.[25]

Broadly speaking, the State Department has considerable discretion with respect to making national interest determinations, so its conclusions for one project within its jurisdiction may not apply to another due to differences in project configuration, energy market conditions, technology, environmental conditions, and other important factors. Thus, Presidential Permit applications even for projects that appear similar are evaluated on a case-by-case basis by the agency and may realize different permit outcomes.

Federal Energy Regulatory Commission (Natural Gas)

Pursuant to Executive Order 10485, FERC makes decisions regarding permit applications for natural gas pipelines that will cross the U.S. border with Mexico or Canada. The agency is required to issue a Presidential Permit if it determines that the project is consistent with the public interest and obtains the favorable recommendations of the Secretaries of State and Defense.[26] FERC is authorized to establish permit conditions that, in its judgment, the public interest may require.[27]

Pursuant to Section 3 of the Natural Gas Act (NGA),[28] FERC is also directed to approve the siting, construction, and operation of natural gas import/export facilities. FERC often integrates implementation of the Presidential Permit process, required under E.O. 10485, with its implementation of requirements established under Section 3 of the NGA.[29] For example, for cross-border natural gas pipelines, FERC has generally issued a joint "Order Issuing Presidential Permit and Granting Authorization Under Section 3 of the Natural Gas Act."

Under a separate directive in Section 3 of the NGA, any person seeking to import or export natural gas to or from the United States is required to obtain federal authorization to do so. Currently, DOE's Office of Fossil Energy is authorized to issue such approvals.[30] Section 3

(...continued)

point of view but to adopt the term most commonly used by the State Department.

[25] See CRS Report R42537, *Canadian Oil Sands: Life-Cycle Assessments of Greenhouse Gas Emissions*, by (name redacted).

[26] See E.O. 10485, §1(a)(3).

[27] Ibid.

[28] 15 U.S.C. 717b.

[29] FERC's regulations, "Applications for Authorization to Construct, Operate, or Modify Facilities Used for the Export or Import of Natural Gas," promulgated at 18 C.F.R. Part 153, implement FERC's delegated authorities under Section 3 of the NGA and E.O. 10485, as amended by E.O. 12038. Subpart C establishes filing requirements an applicant must follow to apply for a Presidential Permit. However, those procedures cross-reference the procedures for applications submitted under Section 3 of the NGA.

[30] That is, under Section 3 of the NGA, a person is generally required to obtain approval from DOE to import/export natural gas and from FERC to construct and operate the facilities used to import/export the commodity itself.

further provides that the export or import of natural gas to a nation that is a party to a free trade agreement requiring national treatment for trade in natural gas shall be deemed to be consistent with the public interest and that applications for such importation and exportation be granted without modification or delay.[31] This provision applies to natural gas trade among the United States, Mexico, and Canada as all three nations are signatories to North American Free Trade Agreement (NAFTA). Still, FERC has drawn from the goals of NAFTA and its interpretation of Section 3 of the NGA when identifying the required scope of its public interest determination in evaluating applications for Presidential Permits. For example, in past approvals, FERC has noted that project construction was necessary to meet the expanding fuel demand for power generation and industrial activity in Mexico or Canada.[32] Also, FERC has stated that it authorized the construction of facilities that will "promote national economic policy by reducing barriers to foreign trade and stimulating the flow of goods and services between the United States and [Mexico or Canada] by facilitating the transportation of natural gas imports and exports authorized by DOE."[33] FERC may also review potential impacts to private landowners.

Section 7(c) of the NGA[34] also authorizes FERC to issue a certificate of public convenience and necessity if the project will involve the construction and operation of a new interstate natural gas pipeline. When a border-crossing facility connects to or involves the construction of interstate pipelines, FERC has chosen to integrate its Presidential Permitting/Section 3 authorization process with its Section 7(c) authorization process.[35]

FERC's potential to have jurisdiction over both the cross-border facilities and its associated interstate pipeline—but not a strictly *intrastate* pipeline—may lead to some confusion among stakeholders when identifying the various factors that FERC must assess in its NEPA review. A FERC order granting a Presidential Permit, issued jointly under Sections 3 and 7, may refer to jurisdictional versus non-jurisdictional facilities, meaning those project facilities over which FERC has siting jurisdiction versus those that are potentially relevant to the NEPA review but over which FERC has no siting jurisdiction—namely intrastate pipelines.

Depending on the context, the identification of non-jurisdictional facilities may also be necessary to determine elements of the project that have some environmental or safety impacts that are subject to additional state or federal law. FERC may be obligated to evaluate the impacts of the construction and operation of such facilities even if it is not authorized to approve them. Identifying non-jurisdictional facilities may also be necessary to identify a start and end point for the project. For example, in FERC's final order authorizing Bakken Hunter, LLC, to build cross-border facilities, the identification of certain non-jurisdictional facilities was necessary to define the beginning and end point of the project.[36]

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[31] 15 U.S.C. §717b(c).

[32] For example, see FERC, *Order Issuing Presidential Permit and Granting Authorization Under Section 3 of the Natural Gas Act*, Docket No. CP13-482-000, November 8, 2013, p. 4.

[33] See FERC, *Order Issuing Presidential Permit and Granting Authorization Under Section 3 of the Natural Gas Act*, Docket No. CP14-24-000, April 24, 2014, pp. 3-4.

[34] 15 U.S.C. §717f.

[35] Issued by FERC in accordance with procedures established in "Applications for Certificates of Public Convenience and Necessity and for Orders Permitting and Approving Abandonment Under Section 7 of the Natural Gas Act," promulgated at 18 C.F.R. Part 157, in addition to application requirements established in 18 C.F.R. Part 153. See, for example, FERC, *Order Issuing Certificate and Granting Presidential Permit*, Docket No. CP13-73-000 and CP13-74-000, June 6, 2014.

[36] See FERC, Docket No. CP14-24-000, p. 2.

FERC regulations implementing NEPA include new gas import/export facilities among the projects it has identified as generally requiring the preparation of an EA, but they identify no cross-border projects that would generally require an EIS or CE.[37] It appears that most Presidential Permits from FERC have involved the preparation of an EA resulting in a FONSI. Those projects have generally involved cross-border facilities that result in the construction of related facilities that extend a relatively short distance into a border state. Therefore, the scope of environmental review has been limited by the footprint of the projects. Consistent with the CEQ regulations implementing NEPA, the scope of FERC's review generally extends beyond the border-crossing facilities. For example, in 2013, FERC issued a Presidential Permit to NET Mexico Pipeline Partners that involved the construction of a 120-mile intrastate gas pipeline from Mexico into Texas.[38] The preparation of FERC's EA and resulting FONSI involved analysis of the entire U.S. segment of the project.

In addition to the size of its footprint, other site-specific issues will affect a proposal's potential to have significant impacts. For example, in March 2014, FERC determined that an EIS was warranted for the Sierrita Pipeline Project, which involved the construction of 61 miles of new natural gas pipeline in Arizona.[39] The project also required an authorization under Section 7 of the NGA. The environmental review process identified several adverse impacts associated with the project, including potential adverse impacts on certain cultural and natural resources in the state. The EIS also identified actions that could be taken to minimize those impacts. These actions would later be included as conditions of permit approval.

Department of Energy (Electricity)

Like FERC, DOE is responsible for issuing Presidential Permits for certain projects pursuant to E.O. 10485. Pursuant to the Federal Power Act (FPA), DOE's Office of Electricity Delivery and Energy Reliability—specifically the Permitting, Siting and Analysis Division—is responsible for authorizing electricity exports[40] and issuing Presidential Permits for cross-border electric transmission lines.[41] Also like FERC, the agency is required to issue a Presidential Permit if it determines that the project is consistent with the public interest and obtains the favorable recommendations of the Secretaries of State and Defense. The agency is also authorized to establish permit conditions that, in its judgment, the public interest may require.[42]

Presidential Permits issued by DOE in the past 10 years appear to be for facilities that import electricity into the United States or connect to existing facilities previously authorized to export electricity. Both actions are not subject to separate approval under the FPA. Still, in past Presidential Permits, DOE noted that it has consistently expressed its expectation that owners of

[37] 18 C.F.R. §380.6(a)(1).

[38] See FERC, Docket No. CP13-482-000.

[39] See "FERC Issues Final Environmental Impact Statement on Sierrita Pipeline Project (Docket Nos. CP13-73-000 and CP13-74-000)," March 28, 2014, https://www.ferc.gov/industries/gas/enviro/eis/2014/03-28-14-eis.asp.

[40] See Section 202(e) of the FPA, as amended (16 U.S.C. 824a(e)). The FPA includes no separate requirement that electricity transmission into the U.S. be authorized.

[41] See DOE's administrative procedures and sanctions at 10 C.F.R. Part 205, specifically Subpart W, §§205.300-205.309, and §§205.320-205.329. Also, for an overview of its permitting process, see DOE, "Interpretive Guidance on the Requirements of 10 C.F.R. § 205.322," June 2, 2011, http://energy.gov/oe/downloads/interpretive-guidance-requirements-10-cfr-205322.

[42] See E.O. 10485, §1(a)(3).

international transmission facilities provide access across the border in accordance with the principles of comparable open access and non-discrimination contained in the FPA.[43]

According to DOE, the two criteria used by the agency to determine if a project is consistent with the public interest, and thus warrants issuance of a Presidential Permit, are (1) environmental impact, identified pursuant to NEPA; and (2) impact on electric reliability, obtained by ascertaining whether the proposal would adversely affect the operation of the U.S. electric power supply system under normal and contingency conditions.[44] With regard to a project's potential impact on electric reliability, it appears that DOE relies on information provided by the applicant to make that determination.

DOE regulations implementing NEPA classify decisions regarding cross-border electric transmission projects as actions that normally require a CE or an EA resulting in a FONSI.[45] Such projects have been found to have no significant impacts (under NEPA) because they involve minor or no new construction, involve the construction or reconstruction of power lines that extended a relatively short distance (i.e., into a single border state before connecting to existing facilities), or were built in a previously developed facility area. For example, in 2007, DOE issued a Presidential Permit to AEP Texas Central Company for a project that was processed as a CE. DOE determined the project did not require an EA or EIS because it met criteria applicable to projects that normally have no significant impact on the environment. In this instance, the project originated at a power company in Laredo, Texas, crossing 0.3 miles through the state before reaching and extending an additional 3.79 miles into Mexico.[46]

DOE has determined that an EIS was required for some proposals after the agency identified conditions unique to that project that would result in significant impacts. When that occurred, the project involved the construction of new power lines that crossed a significant distance within the United States or required additional authorizations under other federal or state law. One example is DOE's recently issued Presidential Permit to Montana Alberta Tie Ltd. for new transmission facilities at the U.S.-Canada border.[47] The project also required authorizations from the Montana Department of Environmental Quality (MDEQ) under state law related to facility siting (a state action subject to the Montana Environmental Policy Act or MEPA) and from the U.S. Bureau of Land Management (BLM) because the project would require a right-of-way grant for Transportation and Utility Systems and Facilities on Federal Land (also a federal action subject to NEPA). DOE planned to prepare an EA for the project. However, since MDEQ decided to prepare a more detailed assessment of the project under MEPA, DOE determined that it would prepare an EIS. DOE worked with MDEQ and BLM to issue a joint EIS that integrated each agency's NEPA/MEPA process.

[43] See U.S. Department of Energy, Office of Electricity Delivery and Energy Reliability, *Presidential Permit No. PP-362*, October 6, 2014, http://energy.gov/oe/downloads/pp-362-champlain-hudson-power-express-inc.

[44] For more information, see the Office of Electricity Delivery and Energy Reliability, "Presidential Permits—Procedures," http://energy.gov/oe/services/electricity-policy-coordination-and-implementation/international-electricity-regulatio-9.

[45] See 10 C.F.R. Part 1021; Subpart D, Appendix B, paragraph B4—specifically B4.6 and B4.12—and Appendix C.

[46] See DOE, Office of Electricity Delivery and Energy Reliability, *Presidential Permit No. PP-317*, January 22, 2007, http://energy.gov/oe/downloads/pp-317-aep-texas-central-company.

[47] See DOE, Office of Electricity Delivery and Energy Reliability, *Presidential Permit No. PP-305*, November 17, 2008, http://energy.gov/oe/downloads/pp-305-montana-alberta-tie-ltd-0.

Another example is the Champlain Hudson Power Express Project, which received a Presidential Permit from DOE in 2014. The proposed transmission lines would cross the U.S.-Canada border at Champlain, NY, and extend 336 miles through the state to the New York City metropolitan area.[48] In its *Federal Register* notice regarding the environmental review of the project, DOE stated that "after due consideration of the nature and extent of the proposed project, including evaluation of the 'Information Regarding Potential Environmental Impacts' section of the Presidential permit application, DOE has determined that the appropriate level of NEPA review for this project is an EIS."[49]

According to DOE, the time it takes to process a Presidential Permit application usually depends on the extent of the environmental analysis.[50] A decision on a permit that involves the preparation of an EA resulting in a FONSI can usually be reached in six months. If an EIS is required to adequately address the full environmental consequences of the proposed action, processing the permit application could take 18 months or longer.[51]

Facility Modifications and Permit Amendments

As noted above, a Presidential Permit authorizes the siting, construction, operation, and maintenance of cross-border infrastructure projects. A permit is issued to a specific applicant and includes conditions that must be met for that specific project. Any subsequent modification to the permitted facility may require separate authorization from the permitting agency before it can proceed. That is, any changes to an authorized project before it is complete (i.e., issues related to siting and construction) or once it begins to operate (i.e., issues related to operation and maintenance) may require a new permit or, more often, an amendment to the existing permit.

A new or amended permit is generally required if the permittee proposes a substantial modification to the authorized cross-border facility. What constitutes a "substantial modification" will vary in accordance with agency procedures and project-specific issues. The State Department has identified specific types of modifications that would generally require an amended Presidential Permit.[52] The modifications are largely similar to those that have required a new or amended Presidential Permit from DOE or FERC. They include:

- **A change in ownership or operation/maintenance responsibility.** Presidential Permits are not transferable; a permittee must submit an application to the

[48] DOE, Office of Electricity Delivery and Energy Reliability, *Presidential Permit*, Order No. PP-362, October 6, 2014.

[49] 75 *Federal Register* 34720, June 18, 2010. The notice also made specific mention that "in accordance with 10 C.F.R. Part 1022*, Compliance with Floodplain and Wetland Environmental Review Requirements*, the draft EIS will include a floodplain and wetland assessment as appropriate." Those requirements apply to all DOE-approved projects.

[50] See footnote 44.

[51] Ibid.

[52] See U.S. Department of State, Bureau of Western Hemisphere Affairs, Office of Canadian Affairs, *Interpretive Guidance on Non-Pipeline Elements of E.O. 13337, Amending E.O. 11423,* 72 *Federal Register* 8245, February 23, 2007, http://www.state.gov/p/wha/rls/94946.htm. While the guidance explicitly excludes pipeline facilities, information provided to CRS by State Department Attorney-Advisor David Huitema (by e-mail on September 26, 2013) indicates that the categories of modifications identified in this guidance could be applied in a similar manner to pipeline facility permitting decisions.

permitting agency explicitly requesting authorization to transfer the facility to a new owner/operator.[53]

- **A permanent change in the authorized conveyance.** This includes changes to the permitted facilities that would be inconsistent with what is described in the permit. With respect to pipelines and transmission lines, such changes involve changes in the physical capacity of the conveyance (i.e., action that could change the amount of oil or gas imported/exported or changes that could affect U.S. electric reliability).
- **Any other modification that would render inaccurate the definition of covered U.S. facilities described in the permit.** This may involve a potentially wide array of changes; FERC explicitly requires a permittee to submit a new application before making any modifications to an existing facility that would involve significant state and local safety considerations that have not been previously addressed.[54]

A review of permits approved in the past five years and permit applications currently pending before FERC, DOE, and the State Department indicates that a sizable percentage of recent Presidential Permit applications involve requests to amend a permit for an already authorized cross-border facility. For example, as of August 6, 2015, 9 companies have 13 permit applications pending before the State Department for cross-border pipelines that transport liquid petroleum and petroleum products (see **Table 1**). Among those, three projects involve a request to approve new construction. The remaining involve new permits or modifications to existing permits for previously approved pipelines. Most of those pending applications involve a name change related to a change in ownership.

[53] For example, see DOE requirements applicable to permit transferability at 10 C.F.R. §205.323.

[54] See reference to 18 C.F.R. Part 153, in footnote 29, specifically 18 C.F.R. §153.12.

Table 1. Presidential Permit Applications Pending at the State Department

Applications for liquid petroleum product pipelines

U.S. Owner/Operator (Pipeline)	Commodity	State	Reason
NOVA Chemical (Line 20)	Natural gas liquids	MI	Reinstate expired permit
NOVA Chemical (Lines 16, 18, 19)	Light hydrocarbons	MI	Ownership transfer
Kinder Morgan (Cochin)	Light hydrocarbons	ND	Ownership transfer
Plains LPG (St. Clair Pipeline)	Light hydrocarbons	MI	Ownership transfer
Plains LPG (Detroit River Pipeline)	Light hydrocarbons	MI	Ownership transfer
Pembina Prairie Pipeline (Vantage)	Ethane	ND	Ownership transfer
TransCanada (Keystone XL)	Crude oil	MT	New construction
Enbridge (Alberta Clipper expansion)	Crude oil	ND	New construction/expansion
NuStar Logistics (Existing Burgos)	Liquefied petroleum gas	TX	Ownership transfer/operational change
NuStar Logistics (New Burgos)	Liquefied petroleum gas	TX	New construction
Nu Star Logistices (Dos Laredos)	Liquefied petroleum gas	TX	Ownership transfer/operational change
Plains Pipeline (Poplar)	Crude oil	MT	Ownership transfer
Upland Pipeline	Crude oil	ND	New construction

Source: State Department list of "Current Permit Applicants," as of August 6, 2015, available at http://www.state.gov/e/enr/applicant/applicants/index.htm.

Depending on the nature of the modification, an agency may amend an existing permit or require a new permit. A decision on whether a facility modification will require a new or amended Presidential Permit is made on a project-by-project basis in accordance with agency-specific requirements. To determine whether a new or amended permit is needed, the permittee will have to provide information to the respective agency regarding the modification. The State Department identifies actions related to cross-border facilities as falling into one of three categories. A permittee may be required to provide the State Department with certain information about the facility modification depending on which of the following categories the action fell:[55]

- **"Red" actions:** a new border crossing or a change to an existing border crossing that is known to involve substantial modifications. These actions require the permittee to submit to the State Department both a notification of the change and an application to amend its permit.
- **"Yellow" actions:** modifications that may have a material effect on Canadian or Mexican government operations but do not clearly involve substantial modifications to a border crossing. These actions require the permittee to submit project notification information to the State Department; the department will then determine if an amended Presidential Permit is required.

[55] DOE and FERC do not have a similar color-coded system for categorizing actions. The agencies may, however, be expected to similarly request different types of information from an applicant depending on whether the project involves entirely new construction or modifications or maintenance to existing facilities.

- **"Green" actions:** regular maintenance and repair work to existing structures that requires no notification to the State Department and no new permit.

A permittee would generally be aware of the permit conditions within which it must operate and the need to notify the permitting agency of any potential facility modifications—such restrictions are explicitly stated in the permit itself. For example, a Presidential Permit issued by the State Department in 2013 for the NOVA Chemicals natural gas liquids pipeline states that "the permittee shall make no substantial change in the United States facilities, the location of the United States facilities, or in the operation authorized by this permit until such changes have been approved by the Secretary of State or the Secretary's delegate."[56] The potential for an amendment may also be acknowledged in a Presidential Permit. For example, in August 2012, DOE issued a Presidential Permit to Energia Sierra Juarez that provided in part that the permit should be amended if subsequent phases of a related wind generation project necessitate changes to the facility, including higher capacity transmission lines or other changes that could impact the reliability of the U.S. power grid.[57]

For any given project, however, the need for a new permit versus an amended permit may not be immediately clear. For example, in February 2012, DOE issued a new Presidential Permit to ITC Transmission to authorize the replacement of failed transformers at an authorized facility.[58] DOE initially began processing that authorization as an amendment to an existing permit. However, because of the complexity of issues raised during that process, DOE determined that a new permit was needed.

Congressional Action on Presidential Permits

Past Legislative Proposals

In recent years, in the context of the Presidential Permit application for the proposed Keystone XL pipeline project, Congress has acted to influence the State Department permitting process or to assert direct congressional authority over permit approval through new legislation. The developer, TransCanada, has applied for a Presidential Permit for this project twice—initially in 2008 (the permit was denied) and again, with a reconfigured project, in 2012. As noted earlier, the latter application is still under review.

In the 112th Congress, the Temporary Payroll Tax Cut Continuation Act of 2011 (P.L. 112-78) included provisions requiring the Secretary of State to issue a Presidential Permit for the Keystone XL project within 60 days, unless the President determined the project not to be in the national interest. Subsequently, the State Department denied TransCanada's initial application for a Presidential Permit stating that it did not have time to complete the national interest determination within the 60-day deadline established in P.L. 112-78.[59] Other legislative proposals

[56] U.S. Department of State, "Presidential Permit Authorizing NOVA Chemicals, Inc. to Connect, Operate, and Maintain Pipeline Facilities at the International Boundary Between the United States and Canada," August 16, 2013, p. 1, http://www.state.gov/documents/organization/213499.pdf.

[57] Presidential Permit available at http://energy.gov/sites/prod/files/PP-334%20ESJ_2.pdf.

[58] Presidential Permit available at http://energy.gov/sites/prod/files/PP-230-4%20ITCTransmission.pdf.

[59] See U.S. Department of State, *Media Note*, "Denial of the Keystone XL Pipeline Application," January 18, 2012, available at http://www.state.gov/r/pa/prs/ps/2012/01/181473.htm.

would also have imposed deadlines on a national interest determination for the Keystone XL project. All of these proposals were mooted by the State Department's initial denial of the permit following the enactment of P.L. 112-78. Additional legislative proposals related to the Presidential Permit process followed TransCanada's second permit application.

In the 113th Congress, several legislative proposals from the prior Congress were reintroduced. The Energy Production and Project Delivery Act of 2013 (S. 17) would have eliminated the Presidential Permit requirement for the Keystone XL project. The Keystone for a Secure Tomorrow Act (H.R. 334) and a Senate bill to approve Keystone XL (S. 582) would have directly approved Keystone XL under the authority of Congress to regulate foreign commerce. The Northern Route Approval Act (H.R. 3) would have eliminated the Presidential Permit requirement for Keystone XL. On March 22, 2013, the Senate passed an amendment to the FY2014 Senate Budget Resolution (S.Con.Res. 8) that would have provided for the approval and construction of Keystone XL (S.Amdt. 494). The North American Energy Infrastructure Act (H.R. 3301) would have transferred permit authority for oil pipelines from the State Department to the Department of Commerce, required agencies to approve applications within 120 days of submission unless they determined the project to be not in the U.S. national *security* interest (as opposed to "national interest" more generally), and eliminated the need for new or revised Presidential Permits for pipeline modifications (e.g., reversal of flow direction), among other provisions. The Keystone XL Pipeline Approval Act (S. 2554), another Senate bill (S. 2280), and a House bill to approve the Keystone XL pipeline (H.R. 5682) would have granted final federal approval to the pipeline. None of these bills were enacted into law.

Legislative Proposals in the 114th Congress

After the November 2014 congressional elections, President Obama reaffirmed his intention to let the current State Department permit review process for Keystone XL "play out."[60] However, with greater majorities in both the House and Senate, Republican leaders stated their intention to again seek congressional authorization of the Keystone XL pipeline as a legislative priority in the 114th Congress.[61] Accordingly, several bills were introduced or reintroduced to support the approval of the pipeline. For example, the Keystone XL Pipeline Act (S. 1 and H.R. 3) and the Keystone XL Pipeline Approval Act (S. 147) would explicitly authorize TransCanada to construct and operate the pipeline and cross-border facilities related to the Keystone XL pipeline proposal and specify that the final EIS prepared for the project would fully satisfy all NEPA requirements and any other federal laws that require federal agency consultation or review of the pipeline (including the Endangered Species Act). The Strategic Petroleum Supplies Act (S. 82) would suspend sales of petroleum products from the Strategic Petroleum Reserve until permits for the Keystone XL pipeline are issued. One legislative proposal (S. 188) would require that crude oil that enters the United States via the Keystone XL pipeline be used as a fuel or to manufacture another product in the United States but specifies conditions under which the President may waive that requirement.

On January 29, 2015, the Senate passed the renamed Keystone XL Pipeline Approval Act (S. 1), as amended, by a vote of 62-36. The bill was passed in the House on February 11 by a vote of 270-152. S. 1 was sent to President Obama on February 24 and vetoed by the President the same

[60] Darren Goode, "Barack Obama: Let Keystone Process 'Play Out,'" *Politico*, November 5, 2014.

[61] Representative John Boehner and Senator Mitch McConnell, "Now We Can Get Congress Going," *Wall Street Journal*, November 6, 2014.

day. President Obama stated that he vetoed S. 1 because it attempted "to circumvent longstanding and proven processes for determining whether or not building and operating a cross-border pipeline serves the national interest."[62] The Senate attempted to override the President's veto on March 4, but the override measure failed by a vote of 62-37. No further action on S. 1 was taken in the House.

Some legislative proposals would modify the Presidential Permit process more broadly. For example, among other provisions, the American Energy Renaissance Act of 2015 (S. 791 and H.R. 1487) would eliminate the Presidential Permit requirement for all cross-border energy infrastructure (§2006). Instead, the bill would require developers of cross-border oil pipelines or electric transmission lines to obtain a "certificate of crossing" for the cross-border segment of a proposed project from the Secretary of Energy (§2003(a)). The certificate would have to be issued within 120 days after final action under NEPA unless the project is found to be not in the "national security interest" of the United States (§2003(b)(1)). Permitting requirements for natural gas pipelines under Sections 3 and 7 of the NGA would remain unchanged. The bill would also eliminate the Presidential Permit requirement for the existing Keystone XL pipeline proposal and deem its NEPA review to be satisfied (§2012).

The North American Energy Infrastructure Act (S. 1228), like S. 791 and H.R. 1487, would eliminate the Presidential Permit requirement for cross-border energy infrastructure (§7). It also contains similar provisions with respect to certificates of crossing, but it would maintain the Department of State as the permitting agency for oil pipelines and would maintain a "public interest" standard for approval (§4(b)). The bill does not seek approval of Keystone XL.

Concluding Observations

There has been considerable focus in Congress and among stakeholders on the review process for Presidential Permits in the context of the Keystone XL pipeline and future cross-border energy infrastructure proposals. Particular attention is paid to the scope of agency review and perceived differences in the approaches taken by the State Department, DOE, and FERC.

Analysis of historical Presidential Permit reviews among the agencies shows that, notwithstanding differences in their permitting authorities under the various executive orders, their permit review processes are driven largely by NEPA—and the same NEPA requirements apply to all agencies. Faced with Presidential Permit applications for energy projects of similar physical scope, the three permitting agencies appear to perform NEPA reviews of similar proportion. Relatively short, small projects are generally reviewed more narrowly and quickly, whereas multi-state projects of large capacity are subject to the more detailed, expansive review of an EIS and tend to face greater public scrutiny and comment—regardless of which agency has jurisdiction. Thus, so long as NEPA applies to Presidential Permit decisions, changes to the delineation of, or jurisdiction over, the border-crossing portion of large projects for permitting purposes may not change the scope of project environmental review.

The imposition of decision deadlines on the permitting agencies after NEPA review is complete, for either national interest or public interest determination, could provide greater process certainty to stakeholders. However, such deadlines would not guarantee project approval or rejection, and

[62] The White House, Office of the Press Secretary, veto statement regarding S. 1, press release, February 24, 2015.

the overall project review would still be contingent on the completion of NEPA review. Thus, the practical effect that any of the legislative proposals introduced to date would have on the review process or the timing of agency decisionmaking on future border-crossing energy infrastructure projects is open to debate.

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