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# Presidential Permits for Border Crossing Energy Facilities

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## Summary

Controversy over the proposed Keystone XL pipeline project has focused attention on the existing U.S. requirements for authorization to construct and operate pipelines and other energy infrastructure at international borders. For the most part, developers are required to obtain a Presidential Permit for border crossing facilities. The agency responsible for reviewing applications and issuing Presidential Permits varies depending on the type of facility. Oil and other hazardous liquids pipelines that cross borders are authorized by the U.S. Department of State. Natural gas pipeline border crossings are authorized by the Federal Energy Regulatory Commission. Electricity transmission facilities are authorized by the Department of Energy. CRS has identified over 100 operating or proposed oil, natural gas, and electric transmission facilities crossing the U.S.-Mexico or U.S.-Canada border.

The authority for federal agencies to review applications and issue Presidential Permits for oil pipelines comes from a series of executive orders. These executive orders have been upheld by the courts as legitimate exercises of the President's constitutional authority over foreign affairs as well as his authority as Commander in Chief. It is worth noting, however, that Congress has enacted statutes applying to cross-border natural gas and electric transmission facilities that require developers of such projects to apply for authorization from executive branch agencies.

In recent years, in the context of the Presidential Permit application for the proposed Keystone XL crude oil pipeline project, Congress has acted to modify the State Department permitting process. Legislation proposed in the 112<sup>th</sup> and 113<sup>th</sup> Congresses has been, for the most part, directed at Presidential Permit authority only with respect to the Keystone XL project—although such legislation could set a precedent for Congress to assert authority over cross border energy infrastructure permits more broadly. However, the North American Energy Infrastructure Act (H.R. 3301) would change presidential permitting for all border crossing energy infrastructure. What practical effects any of these legislative proposals would have on the review and approval of future border crossing energy infrastructure projects is the subject of ongoing debate.

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## Introduction

The executive branch of the U.S. federal government has mandated for decades that developers of border crossing energy facilities must first obtain a Presidential Permit. Until recently, this administrative oversight was undertaken with little fanfare. However, controversy over the proposed Keystone XL oil pipeline—a project that would transport oil sands crude from Alberta, Canada, into the United States—has focused attention on federal permitting of energy infrastructure border crossings.<sup>1</sup> Generally, the construction, operation, and maintenance of facilities that cross the U.S.-Mexico or U.S.-Canada border must be authorized by the federal government through the issuance of a Presidential Permit in accordance with requirements set forth in a series of executive orders. This report discusses these executive orders, including the source of the executive branch authority to issue the orders, the standards set forth in the orders, and the projects approved pursuant to the orders.

## Oil and Products Pipelines

The executive branch exercises permitting authority over the construction and operation of “pipelines, conveyor belts, and similar facilities for the exportation or importation of petroleum, petroleum products” and other products pursuant to a series of executive orders. This authority has been vested in the U.S. State Department since the promulgation of Executive Order 11423 in 1968.<sup>2</sup> Executive Order 13337 amended this authority and the procedures associated with the review, but did not substantially alter the exercise of authority or its delegation to the Secretary of State.<sup>3</sup>

Executive Order 11423 provided that, except with respect to cross-border permits for electric energy facilities, natural gas facilities, and submarine facilities:

The Secretary of State is hereby designated and empowered to receive all applications for permits for the construction, connection, operation, or maintenance, at the borders of the United States, of: (i) pipelines, conveyor belts, and similar facilities for the exportation or importation of petroleum, petroleum products, coal, minerals, or other products to or from a foreign country; (ii) facilities for the exportation or importation of water or sewage to or from a foreign country; (iii) monorails, aerial cable cars, aerial tramways and similar facilities for the transportation of persons or things, or both, to or from a foreign country; and (iv) bridges, to the extent that congressional authorization is not required.<sup>4</sup>

Executive Order 13337 designates and empowers the Secretary of State to “receive all applications for Presidential Permits, as referred to in Executive Order 11423, as amended, for the construction, connection, operation, or maintenance, at the borders of the United States, of

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<sup>1</sup> For more analysis of Keystone XL pipeline issues, see CRS Report R41668, *Keystone XL Pipeline Project: Key Issues*, by (name redacted) et al.

<sup>2</sup> Exec. Order No. 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).

<sup>3</sup> Exec. Order No. 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).

<sup>4</sup> Exec. Order No. 11423, 33 *Federal Register* at 11741.

facilities for the exportation or importation of petroleum, petroleum products, coal, or other fuels to or from a foreign country.”<sup>5</sup> Executive Order 13337 further provides that after consideration of the application and comments received:

If the Secretary of State finds that issuance of a permit to the applicant would serve the national interest, the Secretary shall prepare a permit, in such form and with such terms and conditions as the national interest may in the Secretary’s judgment require, and shall notify the officials required to be consulted ... that a permit be issued.<sup>6</sup>

Thus the Secretary of State is directed by the order to authorize those border crossing facilities that the Secretary has determined would “serve the national interest,” although the text of the Executive Order provides no further guidance on what is considered to “serve the national interest.” Agency documents for a specific permit have discussed the “national interest” determination stating, for example, that “determination of national interest involves consideration of many factors, including: energy security; environmental, cultural, and economic impacts; foreign policy; and compliance with relevant federal regulations.”<sup>7</sup>

One recent example of a national interest determination is the one made for Enbridge Energy’s Alberta Clipper<sup>8</sup> crude oil pipeline, which was issued a Presidential Permit by the State Department in August 2009. The 36-inch-diameter pipeline provides crude oil transportation from the oil sands region of Alberta, Canada, to oil markets in the Midwestern United States, crossing the international border in North Dakota. The State Department’s national interest determination concluded that, for this particular project, the addition of crude oil pipeline capacity between Canada and the United States would advance a number of U.S. “strategic interests.”<sup>9</sup>

These included increasing the diversity of available supplies among the United States’ worldwide crude oil sources in a time of considerable political tension in other major oil producing countries and regions; shortening the transportation pathway for crude oil supplies; and increasing crude oil supplies from a major non-Organization of Petroleum Exporting Countries producer. Canada is a stable and reliable ally and trading partner of the United States, with which we have free trade agreements which augment the security of this energy supply.... Approval of the permit sends a positive economic signal, in a difficult economic period, about the future reliability and availability of a portion of United States’ energy imports, and in the immediate term, this shovel-ready project will provide construction jobs for workers in the United States....<sup>10</sup>

The State Department also considered the greenhouse gas emissions associated with the project, concluding that “the reduction of greenhouse gas emissions are best addressed through each country’s robust domestic policies and a strong international agreement.”<sup>11</sup>

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<sup>5</sup> Exec. Order No. 13337, 69 *Federal Register* at 25299.

<sup>6</sup> *Ibid.* at 25230.

<sup>7</sup> U.S. Department of State, *Final Environmental Assessment for the Vantage Pipeline Project*, May, 2013, p. ES-1.

<sup>8</sup> This pipeline is now referred to by Enbridge as “Line 67.”

<sup>9</sup> U.S. Department of State, “Permit for Alberta Clipper Pipeline Issued,” Media note, August 20, 2009, <http://www.state.gov/r/pa/prs/ps/2009/aug/128164.htm>.

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

The State Department has considerable discretion with respect to making national interest determinations, so its conclusions for one project 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.

## Natural Gas Pipelines and Electric Transmission

Executive Orders 11423 and 13337 explicitly exclude cross-border natural gas pipelines and electric energy facilities (among others) from their reach. Instead, permitting for these facilities is addressed in the Federal Power Act, the Natural Gas Act, and Executive Order 10485.<sup>12</sup> Executive Order 10485 designates and empowers the now-defunct Federal Power Commission:

- (1) To receive all applications for permits for the construction, operation, maintenance, or connection, at the borders of the United States, of facilities for the transmission of electric energy between the United States and a foreign country.
- (2) To receive all applications for permits for the construction, operation, maintenance, or connection, at the borders of the United States, of facilities for the exportation or importation of natural gas to or from a foreign country.
- (3) Upon finding the issuance of the permit to be consistent with the public interest, and, after obtaining the favorable recommendations of the Secretary of State and the Secretary of Defense thereon, to issue to the applicant, as appropriate, a permit for such construction, operation, maintenance, or connection. The Secretary of Energy shall have the power to attach to the issuance of the permit and to the exercise of the rights granted thereunder such conditions as the public interest may in its judgment require.<sup>13</sup>

In many ways this authority resembles the authority granted to the State Department in Executive Orders 11423 and 13337. However, as mentioned above, those orders do not describe the source of the executive branch permitting authority granted by the orders. Judicial opinions indicate that there is a substitution basis for permitting authority being an exercise of the President's "inherent constitutional authority to conduct foreign affairs."<sup>14</sup> By contrast, Executive Order 10485 cites federal statutes for the permitting authority granted to the Department of Energy. The order states:

Section 202(e) of the Federal Power Act, as amended ... requires any person desiring to transmit any electric energy from the United States to a foreign country to obtain an order from the Federal Power Commission authorizing it to do so... Section 3 of the Natural Gas Act ... requires any person desiring to export any natural gas from the United States to a foreign country or to import any natural gas from a foreign country to the United States to obtain an order from the Federal Power Commission authorizing it to do so.

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

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<sup>12</sup> Exec. Order No. 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).

<sup>13</sup> *Ibid.*

<sup>14</sup> *Sisseton-Wahpeton Oyate v. U.S. Department of State*, 659 F. Supp. 2d 1071, 1081 (D.S.D. 2009).

Organization Act of 1977<sup>15</sup> eliminated the Federal Power Commission, transferring its functions to either the newly created Department of Energy (DOE) or the Federal Energy Regulatory Commission (FERC), an independent federal agency that regulates the interstate transmission of electricity, natural gas, and oil. Section 402(f) of the act specifically reserved import/export permitting functions for DOE rather than FERC. As a result, DOE took over the FPC's Presidential Permit authority for border crossing facilities under Executive Order 10485 pursuant to the act. 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.<sup>16</sup>

## Modifications: When is a New or Amended Permit Needed?

As described above, Presidential Permits authorize specific border crossing facilities. Obviously a new facility requires a new Presidential Permit, and a significant overhaul of existing facilities would similarly require a new or amended Permit to authorize the changed facility. On the other hand, at some point a change to a facility is presumably small enough that no new permit would be required. Because every border crossing facility and proposed modification is different, there is no bright line rule about when a proposed modification is significant enough to require a new or amended Presidential Permit. For example, the Presidential Permit issued by the State Department in 2013 for the NOVA Chemicals natural gas liquids pipeline states “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.”<sup>17</sup> Thus, whether a Presidential Permit must be amended ultimately will depend on both the nature of the modification and on the exact nature of the authorization found in the existing permit language. However, the relevant agencies have provided some helpful guidance on this subject.

## FERC Review of Natural Gas Pipeline Modifications

FERC regulations governing authorization of facilities to construct, operate, or modify natural gas import/export facilities are set forth at 18 C.F.R. Part 153. Applications for Presidential Permits are subject to these regulatory requirements. 18 C.F.R. § 153.5 articulates “who should apply” for such FERC authorizations. The regulation provides that any person proposing to site, construct, or operate natural gas import or export facilities or to “amend an existing Commission authorization, including the modification of existing authorized facilities,” must apply for a permit.

## State Department Review of Oil Pipeline Modifications

In February 2007, the State Department’s Bureau of Western Hemisphere Affairs—Office of Canadian Affairs published *Interpretive Guidance on Non-Pipeline Elements of E.O. 13337, Amending E.O. 11423*.<sup>18</sup> As the title indicates, the document is not binding with respect to

<sup>15</sup> P.L. 95-91, 42 U.S.C. §4101 note.

<sup>16</sup> Available at <http://www.ferc.gov/industries/electric/indus-act/siting/doe-delegation.pdf>.

<sup>17</sup> 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>.

<sup>18</sup> 72 *Federal Register* 8245 (February 23, 2007).

pipeline facilities, although dialogue with State Department staff indicated that the guidance found in the document would be applied in a similar manner to pipeline facility permitting decisions.<sup>19</sup> It may also be informative as applied to how other agencies may view the need for new or amended Presidential Permits for the facilities under their purview. According to the *Interpretive Guidance*, any “substantial modifications of existing border crossings” would fall under Executive Order 13337 and thus require a new or amended Presidential Permit. The *Interpretive Guidance* defines “substantial modifications” as

1. An expansion beyond the existing footprint or land port-of-entry inspection facility, including its grounds, approaches, and appurtenances, at an existing border crossing in such a way that the modification effectively constitutes a new piercing of the border;
2. a change in ownership of a border crossing that is not encompassed within or provided for under an applicable Presidential permit;
3. a permanent change in authorized conveyance (e.g., commercial traffic, passenger vehicles, pedestrians, etc.) not consistent with (a) What is stated in an applicable Presidential permit, or (b) current operations if a Presidential permit or other operating authority has not been established for the facility; or
4. any other modification that would render inaccurate the definition of covered U.S. facilities set forth in an applicable Presidential permit.<sup>20</sup>

The *Interpretive Guidance* also provides that projects should be placed in one of three categories: Red (both notification to the State Department and a new or amended permit is required), Yellow (notification required and a new permit may be required), and Green (neither notification nor a permit required). The “Red” category is described in language similar to that found in the document’s definition of a “substantial modification.” The “Yellow” category includes capacity changes, temporary changes due to construction projects and changes in responsibility for ownership, operations, or maintenance, among other things. The “Green” category includes regular maintenance and repair work, exterior changes to a facility within its existing footprint, systems changes (e.g., HVAC, electrical), and changes made at the request or direction of the State Department, among other changes. By way of illustration, **Table 1** summarizes applications for amended Presidential Permits pending at the State Department and the reasons for the applications. Note that this list includes all liquids pipelines under State Department Jurisdiction, including oil and other liquid products.

<sup>19</sup> David. Huitema, Attorney-Advisor, U.S. Department of State, e-mail correspondence, September 26, 2013.

<sup>20</sup> Ibid.



**Table I. Pending Applications for Liquids Pipeline Presidential Permit Amendments**

| U.S. Owner/Operator      | Commodity                  | State | Reason                |
|--------------------------|----------------------------|-------|-----------------------|
| NOVA Chemical            | Brine                      | MI    | Ownership/name change |
| Kinder Morgan (Cochin)   | Light hydrocarbons         | ND    | Ownership/name change |
| Plains Services LPG      | Light hydrocarbons         | MI    | Ownership/name change |
| Enbridge (Line 67)       | Crude oil                  | ND    | Expansion             |
| Spectra Energy (Express) | Crude oil                  | MT    | Ownership/name change |
| Magellan Pipeline        | Refined petroleum products | TX    | Ownership/name change |

**Source:** Department of State permit filings, October 28, 2013, <http://www.state.gov/e/enr/applicant/applicants/index.htm>.

## Department of Energy Review of Electric Transmission Modifications

DOE regulations provide limited express guidance as to when an electric transmission facility modification is significant enough to trigger a requirement that a new or amended Presidential Permit be obtained. For example, DOE regulations note that a new permit application is required when the border crossing facility changes ownership.<sup>21</sup> Recent permitting decisions, however, suggest that any modification that goes beyond regular maintenance and may have reliability impacts would likely require the party to obtain a new or amended Presidential Permit. For example, a new Presidential Permit issued to Energia Sierra Juarez by DOE in August 2012 provided in part that the permit should be amended if/when 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.<sup>22</sup> Six months earlier, DOE issued a new Presidential Permit to ITC Transmission to account for transformer upgrades at an existing facility.<sup>23</sup>

## Executive Branch Authority: Constitutional Issues

The source of the executive branch's permitting authorities in the Executive Orders described above is not explicitly stated in all cases. Powers exercised by the executive branch are authorized by legislation or are inherent presidential powers based in the Constitution. Executive Order 11423 does not reference any statute or constitutional provision as the source of its authority, although it does state that "the proper conduct of foreign relations of the United States requires that executive permission be obtained for the construction and maintenance" of border crossing facilities.<sup>24</sup> Executive Order 13337 refers only to the "Constitution and the Laws of the United States of America, including Section 301 of title 3, United States Code."<sup>27</sup> 3 U.S.C. § 301 simply provides that the President is empowered to delegate authority to the head of any department or agency of the executive branch. Executive Order 10485 cites Section 202(e) of the Federal Power Act as a source of executive branch authority to permit cross-border electricity transmission

<sup>21</sup> 10 C.F.R. §205.323(b).

<sup>22</sup> Presidential Permit available at [http://energy.gov/sites/prod/files/PP-334%20ESJ\\_2.pdf](http://energy.gov/sites/prod/files/PP-334%20ESJ_2.pdf).

<sup>23</sup> Presidential Permit available at <http://energy.gov/sites/prod/files/PP-230-4%20ITCTransmission.pdf>.

<sup>24</sup> Exec. Order No. 11423, 33 *Federal Register* at 11741.

facilities and Section 3 of the Natural Gas Act as a source of the executive branch authority to permit cross-border natural gas pipelines. It also states that “the proper conduct of the foreign relations of the United States requires that executive permission be obtained for the construction and maintenance at the borders of the United States of facilities for the exportation or importation of electric energy and natural gas.”<sup>25</sup>

Federal courts have addressed the legitimacy of cross-border permitting authority not explicitly granted by statute. In *Sisseton-Wahpeton Oyate v. U.S. Department of State*, the plaintiff tribes asked the court to suspend or revoke a presidential permit issued under Executive Order 13337 for the TransCanada Keystone Pipeline.<sup>26</sup> The plaintiffs claimed that the issuance of the national interest determination and the border crossing permit for the project violated NEPA and the Administrative Procedure Act (APA). The U.S. District Court for the District of South Dakota determined that even if the plaintiffs’ injury could be redressed, “the President would be free to disregard the court’s judgment,” as the case concerned the President’s “inherent constitutional authority to conduct foreign policy,” as opposed to statutory authority granted to the President by Congress.<sup>27</sup> The court further found that even if the tribes had standing, the issuance of the Presidential Permit was a presidential action, not an agency action subject to judicial review under APA.<sup>28</sup> The court stated that the authority to regulate the cross-border pipeline lies with either Congress or the President.<sup>29</sup> The court found that “Congress has failed to create a federal regulatory scheme for the construction of oil pipelines, and has delegated this authority to the states. Therefore, the President has the sole authority to allow oil pipeline border crossings under his inherent constitutional authority to conduct foreign affairs.”<sup>30</sup>

In *Sierra Club v. Clinton*,<sup>31</sup> the plaintiff Sierra Club challenged the Secretary of State’s 2009 decision to issue a permit authorizing the Alberta Clipper. The plaintiff claimed that issuance of the permit was unconstitutional because the President had no authority to issue the permits referenced in Executive Order 13337.<sup>32</sup> The defendant responded that the authority to issue permits for these border-crossing facilities “does not derive from a delegation of congressional authority ... but rather from the President’s constitutional authority over foreign affairs and his authority as Commander in Chief.”<sup>33</sup> The U.S. District Court for the District of Minnesota agreed, noting that the defendant’s assertion regarding the source of the President’s authority has been “well recognized” in a series of Attorney General opinions, as well as a 2009 judicial opinion.<sup>34</sup> The court also noted that these permits had been issued many times before and that “Congress has not attempted to exercise any exclusive authority over the permitting process. Congress’s inaction suggests that Congress has accepted the authority of the President to issue cross-border

<sup>25</sup> Exec. Order No. 10485 18 *Federal Register* at 5397 (September 3, 1953).

<sup>26</sup> 659 F. Supp. 2d 1071, 1078 (D.S.D. 2009). This Keystone pipeline project preceded the Keystone XL pipeline.

<sup>27</sup> *Id.* at 1078, 1078 n.5

<sup>28</sup> *Ibid.* at 1081-82.

<sup>29</sup> *Ibid.* at 1081.

<sup>30</sup> *Ibid.*

<sup>31</sup> 689 F. Supp. 2d 1147 (D. Minn. 2010).

<sup>32</sup> *Ibid.* at 1162.

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.* at 1163 (citing 38 U.S. Att’y Gen. 163 (1935); 30 U.S. Op. Att’y Gen. 217 (1913); 24 U.S. Op. Att’y Gen. 100 (1902); 22 Op. Att’y Gen. 408 (1899); and *Natural Resources Defense Council (NRDC) v. U.S. Department of State*, 658 F. Supp. 2d 105, 109 (D.D.C. 2009)).

permits.”<sup>35</sup> Based on the historical recognition of the President’s authority to issue those permits and Congress’s implied approval through inaction, the court found the permit requirement for border facilities constitutional.

## Congressional Action Related to Presidential Permits

As the aforementioned cases show, courts have analyzed the President’s exercise of permitting authority and have held that it is a legitimate exercise of the President’s constitutional authority, and that it does not require legislative authorization. However, they have indicated that congressional inaction plays a role in validating this exercise of executive branch authority, suggesting that these roles could be amended through legislation should Congress choose to do so. In recent years, in the context of the Presidential Permit application for the proposed Keystone XL crude oil pipeline project, Congress has acted to influence the State Department permitting process, or to assert direct congressional authority over permit approval, through new legislation. Note that the developer, TransCanada, has applied for a Presidential Permit for this project two times—initially in 2008 (the permit was denied) and again, with a reconfigured project, in 2012. The latter application is still under review.

In the 112<sup>th</sup> 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. Other legislative proposals also would 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. Additional legislative proposals related to the Presidential Permit process followed TransCanada’s second permit application.

In the 113<sup>th</sup> Congress, several legislative proposals from the prior Congress have been reintroduced. The Energy Production and Project Delivery Act of 2013 (S. 17) would eliminate the Presidential Permit requirement for the reconfigured Keystone XL Project. The Keystone for a Secure Tomorrow Act (H.R. 334) and a Senate bill to approve the Keystone XL Project (S. 582) would directly approve the Keystone XL Project under the authority of Congress to regulate foreign commerce. The Northern Route Approval Act (H.R. 3) would eliminate the Presidential Permit requirement for Keystone. On March 22, 2013, the Senate passed an amendment to the Fiscal Year 2014 Senate Budget Resolution (S.Con.Res. 8) that would provide for the approval and construction of the Keystone XL Project (S.Amdt. 494). The North American Energy Infrastructure Act (H.R. 3301) would transfer permit authority for oil pipelines from the State Department to the Department of Commerce; would require agencies to approve applications within 120 days of submission unless they determine the project is not in the national *security* interest (as opposed to “national interest” more generally); would eliminate the need for new or revised Presidential Permits for modifications such as reversal of flow direction, volume expansion, or adjustments to maintain flow or in cases of changes in ownership; and would remove the requirement for natural gas pipelines that would cross U.S. borders into Canada or Mexico to receive approval from the Department of Energy.

The relevant legislative proposals in the 113<sup>th</sup> Congress, for the most part, would affect Presidential Permit authority only with respect to the Keystone XL project—although they could

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<sup>35</sup> Ibid.

set a precedent for Congress to assert authority over cross -border energy infrastructure permits more broadly. However, as stated by its sponsors, H.R. 3301 explicitly seeks to “to modernize and reform the approval process” for all border crossing energy infrastructure by replacing the current Presidential Permit system set forth in the executive orders discussed in this report.<sup>36</sup> What practical effects any of these legislative proposals would have on the review and approval of future border crossing energy infrastructure projects is the subject of ongoing debate beyond the scope of this report.

## Current and Pending Cross-Border Energy Projects

Through analysis of federal agency permit records, energy trade data, GIS maps, and company information, CRS has identified over 100 operating or proposed oil, natural gas, and electric transmission facilities crossing the U.S.-Mexico or U.S.-Canada border. The facilities, owners, and approximate border-crossing locations are listed in the tables on the following pages. Note that these tables are a listing of existing infrastructure, not permits issued. In many cases specific projects are subject to an initial Presidential Permit and subsequent permit amendments due to changes in ownership, configuration, or operation as discussed above. A number of permit amendment applications (e.g., Enbridge Line 67 expansion) are currently under review. There are also border-crossing projects carrying other commodities not included in these tables. Examples include NOVA Chemical’s brine pipelines and the Cochin Pipeline transporting light hydrocarbons (e.g., ethane and propane) listed earlier in **Table 1**. Another example is the Dakota Gasification Company’s 167-mile carbon dioxide pipeline crossing the border between North Dakota and Saskatchewan, Canada.<sup>37</sup>

**Table 2. U.S. Natural Gas Pipelines Crossing the International Border**

| U.S. Owner/Operator                | U.S. Border Location | State | Status             |
|------------------------------------|----------------------|-------|--------------------|
| Alliance Pipeline Co.              | Sherwood             | ND    | Operating          |
| Bluewater Pipeline                 | Marysville           | MI    | Operating          |
| Centra-Minnesota Pipeline Co.      | Baudette             | MN    | Operating          |
| Centra-Minnesota Pipeline Co.      | International Falls  | MN    | Operating          |
| Centra-Minnesota Pipeline Co.      | Warroad              | MN    | Operating          |
| Connector Pipeline Co.             | Regent Station       | MT    | Operating          |
| El Paso Natural Gas Co.            | Douglas              | AZ    | Operating          |
| El Paso Natural Gas Co.            | Douglas II           | AZ    | Operating          |
| El Paso Natural Gas Co.            | Nogales              | AZ    | Operating          |
| El Paso Natural Gas Co.            | Willcox Lateral      | AZ    | Operating          |
| El Paso Natural Gas Co. (Sierrita) | Sasabe               | AZ    | Applied for Permit |
| El Paso Natural Gas Co.            | Penitas              | TX    | Operating          |

<sup>36</sup> House Energy and Commerce Committee, “Upton and Green Introduce Legislation to Modernize and Reform Cross-Border Energy Project Approvals,” press release, October 22, 2013.

<sup>37</sup> U.S. Department of State, *Receipt of Application for a Presidential Permit for Pipeline Facilities To Be Constructed and Maintained on the Border of the United States*, 64 *Federal Register* at 38070.

| <b>U.S. Owner/Operator</b>                  | <b>U.S. Border Location</b> | <b>State</b> | <b>Status</b>      |
|---|-----------------------------|--------------|--------------------|
| El Paso Natural Gas Co.                     | El Paso                     | TX           | Operating          |
| Empire State Pipeline                       | Grand Island                | NY           | Operating          |
| EnCana Pipelines Ltd.                       | Whitlash                    | MT           | Operating          |
| EnCana Pipelines Ltd.                       | Babb                        | MT           | Operating          |
| Encinal Gathering Ltd.                      | Galvan Ranch                | TX           | Operating          |
| Great Lakes and Viking Transmission Co.     | Noyes                       | MN           | Operating          |
| Great Lakes Gas Transmission Co.            | Sault Ste. Marie            | MI           | Operating          |
| Havre Pipeline Co.                          | Harve                       | MT           | Operating          |
| Iroquois Gas Transmission                   | Waddington                  | NY           | Operating          |
| Kinder Morgan Border Pipeline               | McAllen                     | TX           | Operating          |
| Kinder Morgan Texas Pipeline                | Roma                        | TX           | Operating          |
| Kinder Morgan Border Pipeline Co.           | Salineno                    | TX           | Operating          |
| Maritimes & Northeast Pipeline Co           | Calais                      | ME           | Operating          |
| NET Mexico Pipeline                         | Rio Grande City             | TX           | Applied for Permit |
| Norteno Pipeline                            | El Paso                     | TX           | Operating          |
| North Baja Pipeline Co.                     | Ogilby                      | CA           | Operating          |
| North Country Pipeline                      | Champlain                   | NY           | Operating          |
| Northern Border Pipeline                    | Port of Morgan              | MT           | Operating          |
| Northwest Pipeline                          | Sumas                       | WA           | Operating          |
| Omimex Resources Inc.                       | Port of del Bonita          | MT           | Operating          |
| Omimex Resources Inc.                       | South Battle Creek          | MT           | Operating          |
| Panhandle Eastern Pipeline                  | Detroit                     | MI           | Operating          |
| PG&E Gas Transmission - Northwest           | Eastport                    | ID           | Operating          |
| Portal Municipal Gas/Williston Basin PL Co. | Portal                      | ND           | Operating          |
| Portland Natural Gas Transmission           | Pittsburg                   | NH           | Operating          |
| Reef International Pipeline                 | Eagle Pass-Tidelands        | TX           | Operating          |
| Samalayuca Pipeline (El Paso Energy)        | Clint                       | TX           | Operating          |
| Sempra Energy Co.                           | Otay Mesa                   | CA           | Operating          |
| Sierra Pipeline                             | Sweetgrass                  | MT           | Operating          |
| Sierra Production Co.                       | Sierra Station              | MT           | Operating          |
| Southern California Gas Co.                 | Calexico                    | CA           | Operating          |
| St Lawrence Gas Co.                         | Massena                     | NY           | Operating          |
| Tennessee Gas Pipeline Co.                  | Rio Bravo                   | TX           | Operating          |
| Tennessee Gas Pipeline Co.                  | Niagara Falls               | NY           | Operating          |
| Tennessee Gas Pipeline Co.                  | Alamo                       | TX           | Operating          |
| Texas Eastern Pipeline                      | Hidalgo                     | TX           | Operating          |
| Vector Pipeline/Great Lakes Transmission co | St Clair River              | MI           | Operating          |

| U.S. Owner/Operator | U.S. Border Location | State | Status    |
|---------------------|----------------------|-------|-----------|
| Vermont Gas System  | Highgate Springs     | VT    | Operating |
| West Texas Gas Co.  | Eagle Pass-WTG       | TX    | Operating |
| West Texas Gas Co.  | Del Rio              | TX    | Operating |

**Sources:** Energy Information Administration, *Natural Gas Imports and Exports, Fourth Quarter Report 2012*, DOE/FE-0563, 2013; Federal Energy Regulatory Commission permit filings; Platt's GIS Database; company web sites; CRS analysis.

**Table 3. U.S. Oil Pipelines Crossing the International Border**

| U.S. Owner/Operator          | U.S. Border Location | State | Status             |
|------------------------------|----------------------|-------|--------------------|
| Bridger Pipeline LLC         | Outlook              | MT    | Operating          |
| Enbridge                     | Portal               | ND    | Operating          |
| Enbridge (Mainline)          | Neche                | ND    | Operating          |
| Enbridge (Line 13)           | Neche                | ND    | Operating          |
| Enbridge (Line 67)           | Neche                | ND    | Operating          |
| Enbridge (Light Sour)        | Neche                | ND    | Operating          |
| Enbridge (Line 5)            | Marysville           | MI    | Operating          |
| Enbridge (Line 6B)           | Marysville           | MI    | Operating          |
| Enbridge                     | Erie County          | NY    | Operating          |
| Inter Pipeline               | Toole County         | MT    | Operating          |
| Kinder Morgan                | Sumas                | WA    | Operating          |
| Magellan Midstream Partners  | El Paso              | TX    | Operating          |
| Plains All American Pipeline | Glacier County       | MT    | Operating          |
| PMI Services                 | El Paso              | TX    | Operating          |
| Portland Pipe Line Corp.     | North Troy           | VT    | Operating          |
| Spectra Energy               | Hill County          | MT    | Operating          |
| Sunoco Logistics Partners    | Marysville           | MI    | Operating          |
| Tesoro Logistics             | Portal               | ND    | Operating          |
| TransCanada                  | Walhalla             | ND    | Operating          |
| TransCanada                  | Phillips             | MT    | Applied for permit |
| Vantage Pipeline (ethane)    | Tioga                | ND    | Permit issued      |

Sources: Department of State permit filings; Canadian Association of Petroleum Producers; Energy Information Administration; Platt's GIS Database, company web sites; CRS analysis.

**Table 4. U.S. Electric Transmission Lines Crossing the International Border**

| <b>U.S. Owner/Operator</b>         | <b>U.S. Border Location</b> | <b>State</b> | <b>Status</b>      |
|------------------------------------|-----------------------------|--------------|--------------------|
| AEP Texas Central                  | Laredo                      | TX           | Operating          |
| AEP Texas Central                  | Brownsville                 | TX           | Operating          |
| AEP Texas Central                  | Eagle Pass                  | TX           | Operating          |
| Bangor Hydro-Electric Co.          | Baileyville                 | ME           | Operating          |
| Basin Electric Power Coop.         | Tioga                       | ND           | Operating          |
| Bonneville Power Administration    | Blaine                      | WA           | Operating          |
| Bonneville Power Administration    | Nelway                      | WA           | Operating          |
| Champlain Hudson Power Express     | Lake Champlain              | NY           | Applied for Permit |
| Eastern Maine Electric Cooperative | Calais                      | ME           | Operating          |
| El Paso Electric                   | Ascarate                    | TX           | Operating          |
| El Paso Electric                   | Diablo                      | NM           | Operating          |
| Electric Transmission Texas, LLC   | Presidio                    | TX           | Operating          |
| Frontera Generation LP             | Frontera                    | TX           | Operating          |
| Highgate Project                   | Highgate                    | VT           | Operating          |
| ITC Transmission                   | St. Clair                   | MI           | Operating          |
| ITC Transmission                   | St. Clair                   | MI           | Operating          |
| ITC Transmission                   | Detroit                     | MI           | Operating          |
| ITC Transmission                   | Marysville                  | MI           | Operating          |
| Long Sault, Inc.                   | Massena                     | NY           | Operating          |
| Maine Electric Power Co.           | Houlton                     | ME           | Operating          |
| Maine Public Service               | Aroostook                   | ME           | Operating          |
| Maine Public Service               | Limestone                   | ME           | Operating          |
| Maine Public Service               | Ft. Fairfield               | ME           | Operating          |
| Maine Public Service               | Madawaska                   | ME           | Operating          |
| Minnesota Power                    | International Falls         | MN           | Operating          |
| Minnkota Power Cooperative         | Roseau County               | MN           | Operating          |
| Montana Alberta Tie Ltd.           | Cut Bank                    | MT           | Permit Issued      |
| New York Power Authority           | Massena                     | NY           | Operating          |
| New York Power Authority           | Massena                     | NY           | Operating          |
| New York Power Authority           | Niagara Falls               | NY           | Operating          |
| New York Power Authority           | Devils Hole                 | NY           | Operating          |
| Niagara Mohawk Power Co.           | Devils Hole                 | NY           | Operating          |
| Northern Pass Transmission         | Pittsburg                   | NH           | Applied for Permit |
| San Diego Gas & Electric           | Miguel                      | CA           | Operating          |
| San Diego Gas & Electric           | Imperial Valley             | CA           | Operating          |
| Sea Breeze Olympic Converter       | Port Angeles                | WA           | Operating          |

| U.S. Owner/Operator               | U.S. Border Location | State | Status             |
|-----------------------------------|----------------------|-------|--------------------|
| Sharyland Utilities               | McAllen              | TX    | Operating          |
| Soule Hydro                       | Hyder                | AK    | Applied for Permit |
| Tucson Electric                   | Sahuarita            | AZ    | Applied for Permit |
| Twin Rivers Paper Co.             | Madawaska            | ME    | Operating          |
| Vermont Electric Power Co.        | Derby Line           | VT    | Operating          |
| Vermont Electric Transmission Co. | Norton               | VT    | Operating          |
| Western Area Power Administration | San Luis             | AZ    | Operating          |
| Western Area Power Administration | Falcon Dam           | TX    | Operating          |
| Western Area Power Administration | Amistad Dam          | TX    | Operating          |
| Xcel Energy                       | Roseau County        | MN    | Operating          |
| Xcel Energy                       | Red River            | ND    | Operating          |
| Xcel Energy                       | Rugby                | ND    | Operating          |

**Sources:** Department of Energy, Office of Electricity Delivery and Energy Reliability, permit filings; regional power pool maps; Platt's GIS Database, company web sites; CRS analysis.

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