

**PROCESSES FOR THE ENVIRONMENTAL
AND HISTORIC PRESERVATION REVIEW OF
PROPOSED INTERSTATE NATURAL GAS FACILITIES**

In May 2002, the "Interagency Agreement (IA) on Early Coordination of Required Environmental and Historic Preservation Reviews Conducted in Conjunction with the Issuance of Authorizations to Construct and Operate Interstate Natural Gas Pipelines Certificated by the Federal Energy Regulatory Commission (FERC)" was signed by the FERC and other nine other federal agencies (signatory agencies).

In order to facilitate the coordination between the FERC and the other agencies, the FERC staff developed this document to:

- Inform federal, state, and local agencies (participating agencies) about the basic procedures for the two processing options available to project proponents for the types of projects covered by the IA, with the FERC as the lead federal agency;
- Serve as a supplement to each signatory agency's internal direction on implementing the IA;
- Ensure that all participating agencies have a clear and common understanding of the applicable FERC procedures, and the FERC's expectations of project proponents and each participating agency; and
- Describe how each of the participating agencies can become engaged in the environmental and historic preservation reviews of proposals and applications for interstate natural gas projects.

The FERC is responsible for authorizing the siting, construction, and operation of interstate natural gas pipelines, natural gas storage fields, and the liquefied natural gas (LNG) facilities pursuant to sections 3 and 7 of the Natural Gas Act of 1938 (NGA), as amended. Virtually all applications to the FERC for interstate natural gas projects require some level of coordination with one or more federal agencies to satisfy the FERC's requirements for environmental review under the National Environmental Policy Act (NEPA), the Endangered Species Act, the National Historic Preservation Act, and the Magnuson-Stevens Act.

The May 2002 Interagency Agreement (IA) applies to those projects where the FERC would normally prepare an environmental assessment (EA) or an environmental impact statement (EIS) pursuant to its siting authority under the NGA. The IA provides a framework designed to expedite and streamline environmental and historic preservation reviews that must be conducted in conjunction with the processing of proposals and applications for these projects. Smaller projects can be constructed under blanket-type or automatic authority, or may qualify as categorical exclusions which do not require the FERC to prepare an EA or an EIS.¹

PROPOSALS AND APPLICATIONS FOR NEW FACILITIES

Project proponents seeking authorizations from the FERC under sections 3 or 7 of the NGA have a choice, subject to the FERC's approval, of one of two procedures:

- A. The "Traditional Filing Process"; or
- B. The recently-adopted "NEPA Pre-Filing Process"

Both processes require the project proponent to begin working as soon as possible with the relevant participating agencies to enable them to identify resources and begin their analysis of the project, including identifying any cost recovery procedures.

A. The Traditional Filing Process

In the Traditional Filing Process, the project proponent, not the FERC, makes the first contacts with the participating agencies. The project proponent normally contacts the relevant agencies seeking information to determine the feasibility of building and operating the proposed facilities within an identified project area. The project proponent may contact agency staff informally by phone, or make contact in a written request for information. It is also common for the project proponent to file right-of-way applications with other participating agencies prior to filing an application with the FERC. Some participating agencies may spend considerable time providing data to the project

¹ Most existing interstate natural gas companies hold Blanket Certificates from the FERC that allow them to construct facilities if they meet certain environmental standards and project cost limitations (see CFR 18, sections 157.203 and 157.205) without further Commission review or approval. Consultation with agencies is still required for land use authorizations and environmental consultations because other agencies may have their own permit requirements and may require separate NEPA analysis. Although these types of projects are not covered by the IA, the companies may approach signatory agencies seeking input for environmental review and approval.

proponent, reviewing possible corridors and alternatives, and working with the project proponent to select a route that avoids or minimizes known resource conflicts.

For most large projects, project proponents hold one or more pre-filing meetings with the FERC staff to obtain guidance regarding the required information to meet the FERC's filing requirements, as well as advice on what the project proponent can do to help ensure efficient processing of the application by the FERC. The project proponent may or may not have already contacted the appropriate participating agencies to discuss potential issues prior to a pre-filing meeting with the FERC.

Regardless of whether or not the project proponent contacts the FERC prior to filing its application, under the Traditional Filing Process, the FERC establishes contact with other participating agencies after the application is filed. This first contact generally occurs in conjunction with the FERC's issuance of a Notice of Intent (NOI) to Prepare an EA or EIS, and may be oral or written. The NOI constitutes the beginning of the environmental review process; it contains a brief description of the proposal; a request for participating agencies to identify ("scope") issues and comment on the proposal; a request for cooperating agencies; and contact information with details regarding phone numbers, mail and website addresses. The scoping process is conducted to identify issues, and to identify means of resolving conflicts, and avoiding or mitigating adverse effects. As discussed in the IA, this early point in the process is where the signatory agencies begin to work collaboratively to complete the required review process as expeditiously as feasible.

The key difference between the Traditional Filing Process and the NEPA Pre-Filing Process (described below) is that in the Traditional process the environmental analysis, including scoping, does not begin until after the project proponent files its application with the FERC. Thus, there is often little interaction between the FERC, the project proponent, and other relevant agencies. The result of this is that interagency coordination is deferred until later in the process.

B. The NEPA Pre-Filing Process

The FERC developed the NEPA Pre-Filing Process as a mechanism to identify and resolve issues at the earliest stages of project development by involving the participating agencies and the public earlier in the process. While the NEPA Pre-Filing Process is a voluntary process, available at the request of the project proponent, it is subject to the FERC's approval. The FERC strongly encourages project proponents to avail themselves of the benefits and efficiencies to be gained from increased public involvement and early issue resolution.

Not unlike the Traditional Filing Process, in the NEPA Pre-Filing Process, a participating agency may first become aware of a project through a contact by the project proponent. The project proponent is responsible for asking agencies, other than the FERC, to participate in the NEPA Pre-filing Process. When asked to participate, each participating agency reviews the project, examines its resources and program goals, and then determines whether it is willing and available to participate in the NEPA Pre-Filing Process. A key consideration for some federal land management agencies' participation in the NEPA Pre-Filing Process is the project proponent's willingness to file a preliminary right-of-way application and establish a cost recovery account to fund agency participation (for example, the Bureau of Land Management and the Forest Service). After the project proponent ascertains the willingness of the other agencies to participate in the NEPA Pre-filing Process, it must send a request to the FERC describing why the project proponent wants to use the process, any work done to date, and plans for public involvement. Based on this information, the FERC must then determine whether pre-filing coordination is likely to be successful.

If the FERC approves a project proponent's request to use the NEPA Pre-Filing Process, the project is assigned a Docket Number with a "PF" prefix (e.g., PF01-01) which serves as the identifier for placing all relevant correspondence in the FERC's public record for that project. The FERC then notifies the participating agencies by telephone or in writing that the project proponent's NEPA Pre-Filing request has been approved. The FERC will also discuss the agencies' participation in a planning or informational meeting with the project proponent to discuss land and resource issues and concerns. The FERC and the participating agencies may consult regarding the agencies' ability to commit to a pre-filing time frame and a schedule established by the FERC. Most of the activities described in the IA regarding the NEPA Pre-Filing Process take place much sooner than they would otherwise be conducted in the Traditional Filing Process.

The FERC asks each participating agency to designate a primary contact for the project, and to devote the resources needed to commit to the schedule for processing the proposal. Similarly, the FERC identifies a project manager for each case. The reviews and schedules of all the agencies participating in the NEPA Pre-Filing Process will run concurrently, rather than sequentially, as is often the case in the Traditional Filing Process.

The signatory agencies have agreed in the IA to work with each other, and with other entities as appropriate, to ensure that timely decisions are made and that the responsibilities of each agency are met. The signatory agencies are also expected to provide the information and expertise to conduct the reviews in a timely manner, consistent with the established schedule. Other responsibilities of the signatory agencies in the IA include:

- Identifying each agency's role and responsibilities;
- Identifying significant issues, or other administrative or land use/land designation barriers;
- Providing available data and recommendations; and
- Assisting in the drafting of NEPA documents, and related activities.

TIMELINE COMPARISON

The following discusses the typical timeline for a proposed project, highlighting some of the differences in activity and timing that might occur during the Traditional Filing Process, in comparison to what might occur during those same blocks of time during the NEPA Pre-Filing Process.

Months 0 - 5:

During this initial stage of any project, the project proponent is actively developing and marketing its proposal. Exploratory requests and planning activities are initiated solely by the project proponent. There is little difference between the Traditional and the NEPA Pre-Filing Processes during this time period.

The FERC staff has only very limited knowledge of the project at this stage, based on articles in the trade press, or through informal meetings with the project proponent. At this point, the FERC would not assign any resources to review or evaluate the project proponent's proposal.

As the project proponent develops a study of potential rights-of-way, the participating agencies, landowners, and the general public may be contacted by the project proponent to inform all interested parties of its plans. A project proponent may contact a participating agency with requests for information, such as land ownership patterns, land status, and other available resource data or studies, including requests for copies of documents such as land management plans, existing studies, corridor designations, etc.

It is near the end of this phase that the project proponent may contact federal land management agencies about filing right-of-way applications with and establish cost recovery accounts.

Months 5 - 12:

During this stage, in the Traditional Filing Process, a project proponent is continuing to develop its project plans, and is beginning to identify a preferred route (and alternatives). As required surveys are started, federal, state and local land management

agencies, and landowners are contacted. The FERC staff becomes much more aware of the project at this point, but there is no requirement that the project proponent notify the FERC prior to filing an application. The FERC typically does not devote significant resources to the project during this time. Likewise, other participating agencies with permitting authority would not be expected to devote significant time or resources toward evaluating or addressing a proposal during this phase.

With the NEPA Pre-Filing Process, the FERC staff would begin to devote significant resources to addressing the proposal and working with the project proponent as much as 8 months prior to the filing of an application at the FERC. The FERC staff will make contact with the project proponent and the participating agencies at the earliest possible point to initiate scoping activities and begin the environmental analysis.

It is during this early period of early notification and contact with the interested parties, the development of shortened timelines and schedules, that the benefits of the NEPA Pre-Filing Process are most evident. However, participating agencies should be aware that at this point the project proponent may not have as much specific information about its proposal as it would have under the Traditional Filing Process, after an application has already been submitted to the FERC.

Months 12 - 20:

Using the Traditional Filing Process, the project proponent prepares its environmental reports and assembles its application for filing with the FERC during this period. After the filing of the application, the FERC notifies the public of the receipt of the application, conducts the necessary scoping, identifies and resolves issues, prepares and issues the NEPA document, then issues an Order (equivalent to a Record of Decision) approving the project. For a project requiring an EIS, this process can take 14 to 16 months.

With the NEPA Pre-Filing Process, the frontloading of the scoping, environmental analysis, and initial documentation of that analysis, makes it possible for the FERC staff, in cooperation with the participating agencies, to finalize and issue a Draft EIS shortly after an application is filed (approximately 2 to 3 months after filing of the application). As a result, a final environmental document and Order can be issued by the FERC 5 to 7 months sooner than under the Traditional Filing Process.