



FEDERAL ENERGY REGULATORY COMMISSION

September 28, 2023

The Honorable Cathy McMorris Rodgers
Chair of Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Jeff Duncan
Chair of Subcommittee on Energy, Climate, and Grid Security
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairs McMorris Rodgers and Duncan,

Thank you for the September 1, 2023 letter¹ expressing your concerns about how FERC will implement the changes to the National Environmental Policy Act (NEPA) included in the Fiscal Responsibility Act (FRA), specifically section 321 titled as the Builder Act.² In your letter, you state “the FRA streamlines NEPA and improves federal review times” and that your “goal is to ensure that FERC is following the intent of Congress and adhering to the coordination requirements and deadlines set forth in Section 321 of the FRA.”³

Below, please find my responses to your questions.

¹ Chair McMorris Rodgers & Chair Duncan September 1, 2023 Letter (Letter).

² *Id.* at 1 (citing *Fiscal Responsibility Act of 2023*, Pub. L. 118-5, 137 Stat. 10, at § 321 (2023) (providing the “Builder Act”)). In my response, I refer to the changes as the Builder Act.

³ *Id.*



1. What is FERC’s interpretation of Section 321 of the FRA?

Despite my call to do so,⁴ FERC has yet to issue a decisional document interpreting the Builder Act,⁵ specifically Congress’ intent in revising the requirement that agencies include in their NEPA documents an analysis of the “environmental impact of the proposed action”⁶ to an analysis of the “reasonably foreseeable environmental effects of the proposed *agency* action.”⁷

FERC cannot pretend that the statute has not been amended to add “*agency* action” nor can it plausibly advance a theory that this amendment can be read to have no effect. This is the first time that Congress has amended NEPA since its enactment in 1970, over fifty years ago. Congress did not simply substitute words of the same ordinary meaning, such as *commence* and *start*, and Congress is “presumed to have used no superfluous words.”⁸ The addition of “agency” means something.

⁴ See *Transcon. Gas Pipe Line Co., LLC*, 184 FERC ¶ 61,066 (2023) (Daly, Comm’r, dissenting in part at P 3) (“My colleagues, however, declined to acknowledge [the FRA] or even quote the statute, *i.e.*, NEPA. Regardless of how the Commission ultimately chooses to implement the Builder Act, the simple fact is this: the law has changed, Congress has made its decision, and we must comply with it even if my colleagues do not like it. We cannot skirt our obligation to follow the law by pretending it does not exist.”).

⁵ Indeed, it was only last week that the Commission finally issued orders *acknowledging* that the Builder Act had been passed at all. *Tex. E. Transmission, LP*, 184 FERC ¶ 61,187 (2023); *N. Nat. Gas Co.*, 184 FERC ¶ 61,186 (2023); *Port Arthur LNG Phase II, LLC*, 184 FERC ¶ 61,184 (2023).

⁶ 42 U.S.C. § 4332(c)(i) (1970).

⁷ 42 U.S.C. § 4332(c)(i) (2023) (emphasis added).

⁸ *Platt v. Union Pac. R.R. Co.*, 99 U.S. 48, 58 (1878); see also *U.S. ex rel. Totten v. Bombardier Corp.*, 380 F.3d 488, 499 (D.C. Cir. 2004) (“It is, of course, a ‘cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or



FERC does not need to (nor should it) wait for the Council on Environmental Quality (CEQ) to interpret the Builder Act before implementing Congress' directive. As a "creature of statute," FERC *must comply* with the laws enacted by Congress.⁹ FERC "bears the primary responsibility to ensure that it complies with NEPA."¹⁰ And whether an independent agency owes deference to CEQ's interpretation of NEPA at all is questionable.¹¹

In my view, Congress' addition of "agency" to "proposed action" reaffirms *Public Citizen* which held that under NEPA, agencies are only obligated to consider environmental effects for which the *agency action itself* is the legal proximate cause.¹²

My interpretation is consistent with that which you describe to have been the intent behind the enactment of the Builder Act, which was, to "streamline[] NEPA and improve[] federal review times."¹³ Indeed, reaffirming *Public Citizen* restores to NEPA both its "rule of reason" which ensures that "agencies determine whether and to what extent to prepare an [Environmental Impact Statement (EIS)] based on the usefulness of any new potential information to the decisionmaking process" and its "informational role" to ensure that interested parties can "provide input as necessary to the agency

insignificant." (quoting *Alaska Dep't of Env'tl. Conservation v. EPA*, 540 U.S. 461, 489 n.13 (2004)).

⁹ *Atl. City Elec. Co. v. FERC*, 295 F.3d 1, 8 (D.C. Cir. 2002) (quoting *Michigan v. EPA*, 268 F.3d 1075, 1081 (D.C. Cir. 2001)).

¹⁰ *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 765 (2004) (citation omitted) (*Public Citizen*).

¹¹ See *Food & Water Watch v. U.S. Dep't of Agric.*, 1 F.4th 1112, 1118-19 (D.C. Cir. 2021) (Randolph, J., concurring) ("CEQ is not an independent agency. It is part of the Executive Office of the President, created for the purpose of advising the President on environmental matters. No statute grants CEQ the authority to issue binding regulations.") (citations omitted).

¹² See 541 U.S. at 767.

¹³ Letter at 1.



making the relevant decisions.”¹⁴ Agencies should only expend resources to consider information that can legally affect an agency’s decision making. Adding “agency” was necessary given that the lower courts¹⁵ and more recently, CEQ, have (unlawfully) eliminated the “legal proximate cause” requirement.¹⁶

Given this new statutory language, FERC now has an opportunity to clarify the appropriate metes and bounds of its obligations under NEPA in light of the jurisdictional limits of the Natural Gas Act (NGA). Such clarification is particularly called for given the U.S. Court of Appeals for the District of Columbia Circuit’s (D.C. Circuit) mischaracterization of the scope of FERC’s authority in *Sabal Trail* and its progeny. *Sabal Trail* miscasts FERC’s analysis under NGA section 7’s public convenience and necessity standard¹⁷ to hold that the Commission has an obligation to consider the greenhouse gas emissions from the end use of the gas transported by FERC-jurisdictional

¹⁴ 541 U.S. at 767-69.

¹⁵ See *Sierra Club v. FERC*, 867 F.3d 1357 (D.C. Cir. 2017) (*Sabal Trail*); see also *id.* at 1383 (Brown, J., concurring in part and dissenting in part) (“Thus, just as FERC in the [Department of Energy] cases and the Federal Motor Carrier Safety Administration in *Public Citizen* did not have the legal power to prevent certain environmental effects, the Commission here has no authority to prevent the emission of greenhouse gases through newly-constructed or expanded power plants approved by the Board.”); *Ctr. for Biological Diversity v. U.S. Army Corps of Eng’rs*, 941 F.3d 1288, 1300 (11th Cir. 2019) (“[T]he legal analysis in *Sabal Trail* is questionable at best. It fails to take seriously the rule of reason announced in *Public Citizen* or to account for the untenable consequences of its decision.”).

¹⁶ See *Nat’l Env’tl. Policy Act Guidance on Consideration of Greenhouse Gas Emissions & Climate Change*, 88 Fed. Reg. 1196, 1204 (Jan. 9, 2023) (“Indirect effects generally include reasonably foreseeable emissions related to a proposed action that are upstream or downstream of the activity resulting from the proposed action. For example, where the proposed action involves fossil fuel extraction . . . [t]he reasonably foreseeable indirect effects of such an action would include effects associated with the processing, refining, transporting, and end-use of the fossil fuel being extracted, including combustion of the resource to produce energy.”).

¹⁷ 15 U.S.C. § 717f.



pipelines.¹⁸ The NGA, however, confers no authority upon FERC over the end use or local distribution of natural gas.¹⁹ Rather, when deciding whether to approve a pipeline, the Commission determines whether there is a demonstrated need for interstate natural gas transportation capacity. The analysis is not whether the Commission approves of the use of the gas or its effects. Based on this misunderstanding of FERC’s authority, the *Sabal Trail* court concludes that FERC must include estimates of the GHG emissions

¹⁸ See *Sabal Trail*, 867 F.3d at 1373 (“Because FERC could deny a pipeline certificate on the ground that the pipeline would be too harmful to the environment, the agency is a ‘legally relevant cause’ of the direct and indirect environmental effects of pipelines it approves. *Public Citizen* thus did not excuse FERC from considering these indirect effects.”) (citation & footnote omitted). I note, however, that *Nat’l Cable & Telecommunications Ass’ns v. Brand X Internet Services* holds that even following a binding judicial issuance, agencies remain free in subsequent proceedings to offer reasonable interpretations of the jurisdiction conferred upon them by their organic statutes. 545 U.S. 967, 982-83 (2005) (*Brand X*). This proposition, for better or for worse, is now black letter administrative law. Far from flouting the authority of the courts, I suggest no more than that the Commission act within the remit confirmed in *Brand X* by offering a reasonable interpretation of our statute which would limit our jurisdiction consistent with the NGA’s purpose and its plain text. See 15 U.S.C. § 717(b) (listing the exemptions from the Commission’s jurisdiction). And we can do so secure in the knowledge that such an interpretation—again, for better or for worse—will be accorded the deference guaranteed by *Chevron*. See *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 843 (1984) (*Chevron*) (“[I]f the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency’s answer is based on a permissible construction of the statute.”).

¹⁹ See 15 U.S.C. § 717(b) (“The provisions of this chapter shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, and to the importation or exportation of natural gas in foreign commerce and to persons engaged in such importation or exportation, *but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.*”) (emphasis added).



from the end use of the gas or explain why it is unable to do so,²⁰ and goes even further, in *dicta*, to assert, without any explanation, that FERC has “legal authority to mitigate” the environmental effects that result from that end use.²¹

Aside from violating Supreme Court case law, *Sabal Trail* suffers another problem. To the extent to which the public interest standard under section 7 of the NGA encompasses as broad a universe of matters as the D.C. Circuit suggests, it raises profound delegation questions because such a broad and standardless inquiry is underpinned by no intelligible principle.²² When FERC confines itself to its proper role as an economic regulator, discharging longstanding and clearly defined obligations, it acts within the authorities delegated by Congress and does not intrude on authorities delegated by Congress to other agencies. Such intrusions and overreach are nearly inevitable when FERC sees the NGA as an authorization to act under a general warrant to do good.²³

Worse yet, the D.C. Circuit itself has profoundly confused the matter by issuing irreconcilable opinions, creating a body of contradictory case law. That FERC must weigh the effects of third-party actions over which it has no jurisdiction as required by *Sabal Trail*, cannot be reconciled with the D.C. Circuit’s uninterrupted line of cases examining the scope of the Commission’s obligations when permitting liquefied natural gas (LNG) export facilities. In those cases, the D.C. Circuit, applying *Public Citizen*, acknowledges that the Commission “has no regulatory authority” over the export of natural gas, “break[ing] the NEPA causal chain” because the Department of Energy is

²⁰ See *Sabal Trail*, 867 F.3d at 1374 (“We conclude that the EIS for the Southeast Market Pipelines Project should have either given a quantitative estimate of the downstream greenhouse emissions that will result from burning the natural gas that the pipelines will transport *or explained more specifically why it could not have done so.*”) (emphasis added); *id.* at 1375 (“Our discussion so far has explained that FERC must either quantify and consider the project’s downstream carbon emissions *or explain in more detail why it cannot do so.*”) (emphasis added).

²¹ *Id.* at 1374.

²² See *Whitman v. Am. Trucking Ass’ns, Inc.*, 531 U.S. 457 (2001).

²³ See *NAACP v. FPC*, 425 U.S. 662 (1976).



responsible for approving the export of natural gas.²⁴ Likewise, FERC has “no regulatory authority” over the end use of natural gas. The LNG cases acknowledge clear limits to the Commission’s jurisdiction, while *Sabal Trail* works a contradictory and limitless expansion.

Sabal Trail’s mistake opened the door for the Commission to promulgate policy statements announcing that the Commission would expect developers of interstate natural gas pipelines to include proposals for how they would mitigate the downstream use of the natural gas that their pipelines would transport when filing their applications for certificates of public convenience and necessity. Building on *Sabal Trail*, the Commission’s proposal suggested that that Commission would hold interstate pipeline companies responsible for the environmental effects of the end use of natural gas through mitigation measures that it might impose. Such liability, unspecified and potentially limitless in scope, prompted an outcry from pipeline developers and Congress, so the Commission acted, not to rescind the policy statements, but to recharacterize them as “drafts.” The Commission, as a result, has retained for itself the ability to reimpose the framework advanced in those policy statements, either through the finalization of the statements or through seriatim adjudication. The result is that the natural gas pipeline industry is still operating under a cloud of uncertainty, increasing their cost of capital, and inhibiting the development of desperately needed infrastructure.

2. How long will it take FERC to implement fully Section 321 of the FRA?

FERC should implement the Builder Act immediately. In my view, and if my colleagues were so inclined, it should not take FERC much effort to interpret the addition of “agency” to section 102 of NEPA as a reaffirmation of *Public Citizen*. For instance, in its natural gas certificate orders, FERC could, simply, state that NEPA does not require the consideration of the environmental effects of natural gas production or consumption over which it has no legal authority.

As for implementing the new procedural requirements, such as page limits, FERC Staff has informed me that they anticipate it will take some time to identify how to come into compliance while at the same time meeting the agency’s obligations under the Administrative Procedure Act (APA). I am not surprised. NEPA documents are

²⁴ *Sierra Club v. FERC*, 877 F.3d 36 (D.C. Cir. 2016) (citing *Public Citizen*, 541 U.S. at 769).



becoming longer and longer—and taking more time to prepare—in an effort to reduce the likelihood that a court will find that an agency has run afoul of the APA by failing to explore this or that issue or by responding insufficiently to any particular argument. If a court determines that an agency has not lived up to either of these obligations, it can find the agency’s decision arbitrary and capricious under the APA and vacate and remand the agency’s order.

As an example, two years ago, the D.C. Circuit remanded to FERC its authorizations for two LNG projects in Brownsville, Texas for failure to address two arguments, one of which was arguably not properly raised by the petitioners.²⁵ FERC had done everything it could to survive judicial review—it prepared 500-page and 700-page environmental analyses (not including appendices) in a good faith effort to address all reasonably foreseeable environmental impacts of the project and responded to all of the well-pleaded arguments raised by litigants.²⁶ Nevertheless, the court wielded a veto.

The Builder Act does not eliminate this profound litigation risk. Instead, the new procedural requirements may actually be counterproductive, exposing the Commission’s issuances to judicial review by hampering an agency’s ability to defend its actions by limiting its opportunity to fully respond to all of the arguments raised by imposing arbitrary page limits. In other words, by limiting an agency’s opportunity to respond to arguments raised by parties not similarly restricted, these new procedural requirements will force the agency to litigate with one hand tied behind its back. If Congress’ goal is to reverse the long and still lengthening permitting timelines, significant—not modest—reform is required. Congress must limit the discretion courts have to exercise a *de facto* veto over the nation’s critical infrastructure. Without such reforms, agency action will continue to be obstructed by the fear that a court could overturn its decision for failure to address minor issues that, according to a reviewing judge, were insufficiently addressed in the environmental review process. Challenges to agency action would then have to be

²⁵ See *Vecinos para el Bienestar de la Comunidad Costera v. FERC*, 6 F.4th 1321 (D.C. Cir. 2021).

²⁶ See FERC, Final Environmental Impact Statement – Texas LNG Project, Docket No. CP16-116-000 (Mar. 15, 2019) (Accession No. 20190315-3053) (environmental analysis in Volume I); FERC, Final Environmental Impact Statement – Rio Grande LNG Project and Rio Bravo Pipeline Project, Docket Nos. CP16-454-000, et al. (Apr. 26, 2019) (Accession No. 20190426-3020) (environmental analysis in Volume I).



focused, not on the procedural requirements of NEPA, but on the agency’s adherence to the substantive requirements of the agency’s own authorizing statute.

3. What changes are being made to FERC’s existing NEPA review processes to ensure that the Agency is following the updated law?

Despite my call to do so,²⁷ I am not aware of FERC taking steps to interpret the meaning of “proposed *agency* action” in the Builder Act.

As for changes to implement the new procedural requirements, FERC Staff has informed me that they are developing a plan for compliance and has complied when FERC can do so while still meeting its APA obligations and not delaying the proceeding.²⁸

²⁷ *Transcontinental Gas Pipe Line Co., LLC*, 184 FERC ¶ 61,066 (2023) (Danly, Comm’r, dissenting in part at P 3) (“My colleagues, however, declined to acknowledge [the FRA] or even quote the statute, *i.e.*, NEPA. Regardless of how the Commission ultimately chooses to implement the Builder Act, the simple fact is this: the law has changed, Congress has made its decision, and we must comply with it even if my colleagues do not like it. We cannot skirt our obligation to follow the law by pretending it does not exist.”).

²⁸ *See, e.g.*, FERC Staff September 6, 2023 Notice of Availability of Draft Environmental Assessment of Hinckley (Gregory B. Jarvis) Hydroelectric Project, Project No. 3211-010, at 1 (Accession No. 20230906-3014) (“A multi-project [Environmental Assessment (EA)] would have exceeded the page limit established in the Act, so staff has prepared a stand-alone draft [EA] for the Jarvis Project.”).



4. Are you confident that FERC will be able to meet the two-year and one-year statutory deadline for EIS and EA reviews, respectively?

Most of FERC's environmental documents are prepared when reviewing applications for natural gas infrastructure facilities filed under NGA²⁹ and for applications for hydropower facilities under the Federal Power Act (FPA).³⁰

In processing natural gas infrastructure applications, based on current processing timelines, I anticipate that FERC will meet the new statutory deadlines. FERC has consistently prepared EISs within two years and EAs within one year of issuing a notice of intent to prepare the applicable environmental document.³¹ In fact, FERC previously acted on applications within one year of an application being filed.³² One should not expect project review timelines of natural gas applications to be accelerated because of the new statutory deadlines. In my view, the deadlines may well have the opposite of the intended effect for natural gas infrastructure reviews because the statutory timelines provide FERC more time than it has historically needed.

²⁹ See 15 U.S.C. §§ 717f(b), 717f(c), 717f(e).

³⁰ 16 U.S.C. §§ 791-823g (provisions regulating hydropower facilities).

³¹ See App. A-B (showing timeline for issuance of EA and EIS for processing of natural gas infrastructure). For FERC issuances, the statutory deadline would begin the date that FERC Staff issues a notice of intent (NOI) to prepare the applicable NEPA document. 42 U.S.C. § 4336a(g)(1)(A)(iii), (g)(1)(B)(iii). The other two circumstances triggering the deadlines either do not occur or would occur along with the NOI. See *id.* § 4336a(g)(1)(A)(i), (g)(1)(B)(i) (the date when the agency determines the action requires an EIS or EA); *id.* § 4336a(g)(1)(A)(ii), (g)(1)(B)(ii) (the date when the agency determines application for a right-of-way is complete).

³² For instance, the average processing time for natural gas infrastructure applications where staff prepared an EA (done for the majority of applications) was 9.4 months. See Commissioner Danly November 29, 2021 Response to Senator Barrasso, Docket Nos. CP20-27-000, et al., at App. C (average processing time for NGA Section 3 and 7 Applications from 2011 through 2020); *id.* at 12, Figure 2 (types of NEPA documents from 2016-2021).



In processing hydropower applications, based on current processing times, I anticipate that FERC will generally meet the new statutory deadlines except for licensing proceedings.³³ Over the last year, FERC would have failed to meet the one-year deadline for issuing an EA on four occasions, all licensing proceedings.³⁴ While FERC may endeavor to expedite its review to meet the deadlines, I am not certain that FERC or other agencies will be able to do so, nor will they be held meaningfully to account should they fail. Like the FRA, the Energy Policy Act of 2005 (EPA 2005) provided project sponsors an opportunity to obtain review of alleged failures to act within a statutory deadline. Since the enactment of EPA 2005, project sponsors have only sought this judicial relief three times.³⁵

5. Will you commit to adhering to the page limits for EIS and EA reviews set forth in the FRA?

I will implement the law as enacted by Congress. However, as a commissioner, I have limited control over the preparation of NEPA documents which are staff documents prepared under the supervision of the Chairman.³⁶ FERC Staff has informed me that they are developing a plan to comply with the page limits and have made changes to comply when doing so does not delay the issuance of the environmental document.³⁷ It is worth

³³ See App. C.

³⁴ *Id.* (showing four licensing proceedings where the EA was issued after one year).

³⁵ See *Millennium Pipeline Co., L.L.C. v. Seggos*, 860 F.3d 696 (D.C. Cir. 2017); *Tenn. Gas Pipeline Co., LLC v. Paul*, 692 F. Appx. 3 (D.C. Cir. 2017); *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238 (D.C. Cir. 2013).

³⁶ 18 C.F.R. § 380.8 (“The preparation of environmental documents . . . is the responsibility of the Commission’s Office of Energy Projects”); 42 U.S.C. § 7171(c) (“The Chairman shall be responsible . . . for the executive and administrative operation of the Commission, including . . . the supervision of personnel employed by or assigned to the Commission”).

³⁷ See, e.g., FERC Staff September 6, 2023 Notice of Availability of Draft Environmental Assessment of Hinckley (Gregory B. Jarvis) Hydroelectric Project,



emphasizing that the statutory page limits *will not* meaningfully improve permitting timelines or could even backfire if the profound litigation risk that NEPA creates goes unaddressed.

6. Will FERC apply the NEPA changes to projects and reviews that are already in process, or does the Agency plan to apply the NEPA changes just prospectively?

FERC should apply the NEPA changes as expeditiously and in as many proceedings as possible. FERC Staff has informed me that they are implementing the new procedural requirements for projects and reviews already in process when doing so would not delay the proceeding. FERC’s issuances show this having occurred in four staff notices in hydropower proceedings.³⁸ FERC has yet to reference the Builder Act in a NEPA document.³⁹

Project No. 3211-010, at 1 (Accession No. 20230906-3014) (“A multi-project EA would have exceeded the page limit established in the Act, so staff has prepared a stand-alone draft [EA] for the Jarvis Project.”).

³⁸ FERC Staff September 6, 2023 Notice of Availability of Draft Environmental Assessment of Hinckley (Gregory B. Jarvis) Hydroelectric Project, Project No. 3211-010, at 1 (Accession No. 20230906-3014) (citation omitted); *see also* FERC Staff September 6, 2023 Notice of Availability of Draft Environmental Assessment for West Canada Creek Hydroelectric Project, Project No. 2701-061, at 1 (Accession No. 20230906-3032) (referring to page limits); FERC Staff August 21, 2023 Notice of Intent to Prepare an Environmental Assessment Pyrites Hydroelectric Project, Project No. 6115-016, at 2 n.1 (Accession No. 20230821-3003) (referring to 1-year deadline for issuing EAs); FERC Staff August 17, 2023 Notice of Intent to Prepare an Environmental Assessment for Bedford Hydroelectric Project, Project No. 5596-020, at 2 n.1 (Accession No. 20230817-3013) (same).

³⁹ *See, e.g.*, FERC Staff September 6, 2023 Draft Environmental Assessment of Hinckley (Gregory B. Jarvis) Hydroelectric Project, Project No. 3211-010 (Accession No. 20230906-3004) (no mention of the Builder Act); FERC Staff September 1, 2023 Notice of Schedule for the Preparation of an Environmental Assessment for the Swarts and Hunters Cave Well Replacement Project, Docket No. CP23-507-000 (Accession No.



* * *

Thank you for the opportunity to share my thoughts. If I can be of any further assistance with these issues or any other Commission matter, please do not hesitate to contact me.

Sincerely,

James P. Danly
Commissioner

20230901-3026) (same); FERC Staff August 30, 2023 Notice of Schedule for the Preparation of an Environmental Assessment for the Port Arthur Liquefied Natural Gas Amendment, Docket No. CP23-501-000 (Accession No. 20230830-3023) (same); FERC Staff August 10, 2023 Notice of Schedule for the Preparation of an Environmental Assessment for the South Louisiana Project, Docket No. CP23-492-000 (Accession No. 20230810-3026) (same).



APPENDICES

Appendix A

| Name | Project Name | Docket | Date of NOI⁴⁰ | Date EA Issued | Duration |
|---|---|---------------------------|---------------------------------|-----------------------|-----------------|
| Saguaro Connector Pipeline, LLC | Saguaro Connector Pipeline Project | CP23-29-000 | 3/15/23 | 8/25/23 | 163 days |
| Texas Eastern Transmission, LP | Grand Chenier Compressor Station Abandonment Project | CP23-57-000 | 4/7/23 | 8/8/23 | 123 days |
| ANR Pipeline Company | Wisconsin Reliability Project | CP23-15-000 | 1/30/23 | 7/21/23 | 172 days |
| Transcontinental Gas Pipe Line Company, LLC | Texas to Louisiana Pathway Project | CP22-495-000 | 1/27/23 | 6/9/23 | 133 days |
| Wyoming Interstate Company, L.L.C. | Diamond Mountain Compressor Station Abandonment Project | CP23-14-000 | 2/8/23 | 5/19/23 | 100 days |
| Venture Global Plaquemines LNG | Plaquemines LNG Amendment Project | CP17-66-001 & CP17-67-001 | 2/2/23 | 5/19/23 | 106 days |
| Tres Palacios Gas Storage LLC | Tres Palacios Cavern 4 Expansion Project | CP23-3-000 | 1/6/23 | 5/12/23 | 126 days |
| Port Arthur LNG Phase II, LLC | Port Arthur LNG Expansion Project | CP20-55-000 | 10/1/19 ⁴¹ | 1/15/21 | 472 days |

⁴⁰ For some projects, FERC issued a revised Notice of Intent announcing that it would prepare an EA instead of an EIS as initially planned pursuant to FERC's prior policy from May 2021 through December 2022. These proceedings are indicated by asterisk.

⁴¹ While FERC issued a Supplemental EA for the project, I only calculate the number of days from the issuance of the Notice of Intent for the initial EA and the date that EA was issued.

| | | | | | |
|---|--|--|-----------|---------|-----------------------------|
| PALNG Common Facilities Company, LLC | | | | | |
| Trailblazer Pipeline Company LLC | Trailblazer Conversion Project | CP22-468-000 | 9/29/22 | 3/31/23 | 183 days |
| Transcontinental Gas Pipe Line Company, LLC | Southeast Energy Connector Project | CP22-501-000 | 10/28/22* | 3/24/23 | 147 days |
| Boardwalk Storage Company | BSC Compressor Replacement Project | CP22-494-000 | 10/17/22 | 3/13/23 | 147 days |
| Venture Global Plaquemines LNG, LLC | Venture Global Plaquemines LNG, LLC's Uprate Amendment Project | CP22-92-000 | 8/26/22 | 1/6/23 | 133 days |
| Texas Eastern Transmission, LP | Appalachia to Market II and Entriken HP Replacement Project | CP22-486-000 | 8/19/22* | 2/10/23 | 175 days |
| Total Average | | Including Port Arthur LNG Application: | | | 167.69 days; 5.51 months |
| | | Excluding Port Arthur LNG Application: | | | 131.38 days; 4.32 months |

Appendix B

| Name | Project Name | Docket | Date of NOI | Date Final EIS Issued | Duration |
|---|---|------------------------------|--------------------|------------------------------|--------------------------|
| Venture Global CP2 LNG, LLC Venture Global CP Express, LLC | CP2 LNG and CP Express Project | CP22-21-000 & CP22-22-000 | 2/9/22 | 7/28/23 | 534 days |
| Tennessee Gas Pipeline Company, LLC | Cumberland Project | CP22-493-000 | 9/7/22 | 6/30/23 | 296 days |
| WBI Energy Transmission, Inc. | Wahpeton Expansion Project | CP22-466-000 | 6/22/22 | 4/7/23 | 289 days |
| Northern Natural Gas Company | Northern Lights 2023 Expansion Project | CP22-138-000 | 7/28/22 | 3/10/23 | 225 days |
| Transcontinental Gas Pipe Line Company, LLC | Southside Reliability Enhancement Project | CP22-461-000 | 7/25/22 | 2/24/23 | 214 days |
| Texas Eastern Transmission, LP | Venice Extension Project | CP22-15-000 | 3/16/22 | 2/17/23 | 338 days |
| Alliance Pipeline L.P. | Three Rivers Interconnection Project | CP21-113-000 | 2/10/22 | 1/13/23 | 337 days |
| Equitrans, L.P. | Ohio Valley Connector Expansion Project | CP22-44-000 | 7/7/22 | 1/20/23 | 197 days |
| Total Average | | | | | 303 days; 9.96 months |

Appendix C

| Name | Project Name | Docket | Notice of Intent to Prepare EA | Date EA Issued | Duration |
|---|--|--|--------------------------------|----------------|-----------------|
| Beaver City Corporation | Relicensing of Beaver City Canyon Plan No. Hydroelectric Project | P-1858-023 | 8/29/22 | 8/29/23 | 365 days |
| Indiana Michigan Power Company | Non-Project Use of Project Lands at Twin Branch Hydroelectric Project | P-2579-065 | N/A | 7/12/23 | N/A |
| Public Service Company of Colorado | Decommissioning of Salida Hydroelectric Project | P-2275-050 | N/A | 7/14/23 | N/A |
| Let It Go, LLC | Small Hydropower Exemption for Jefferson Mill Hydroelectric Project | P-15038-001 | 10/28/22 | 7/31/23 | 276 days |
| City of River Falls Municipal Utilities | Relicensing of River Falls Hydroelectric Project | P-10489-020 | 5/6/22 | 8/21/23 | 472 days |
| Cocheco Falls Associates | Relicensing of Cocheco Falls Dam Hydroelectric Project | P-4718-039 | 10/26/21 | 9/21/22 | 330 days |
| Eagle Creek Hydro Power, LLC, Eagle Creek Water Resources, LLC, and Eagle Creek Land Resources, LLC | Relicensing of the Swinging Bridge Hydroelectric Project, Mongaup Falls Hydroelectric Project, and Rio Hydroelectric Project | P-10482-122 P-10481-069 P-9690-115 | 6/14/21 | 9/28/22 | 471 days |
| Moon Lake Electric Association, Inc. | Surrender of the Yellowstone Hydroelectric Project | P-1773-042 | N/A | 9/30/22 | N/A |

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| Enel Green Power North America, Inc. | Relicensing of Groveville Hydroelectric Project | P- 3511-024 | 7/22/21 | 10/28/22 | 463 days |
| Topsham Hydro Partners Limited Partnership | Pejepscot Hydroelectric Project | P-4784-106 | 5/10/22 | 11/2/22 | 176 days |
| City of Idaho Falls | Non-Project Use of Project Lands and Waters at Idaho Falls Hydroelectric Project | P-2842-044 | N/A | 11/8/22 | N/A |
| Georgia Power Company | Non-Capacity Amendment for the North Georgia Project | P-2354-152 | N/A | 12/1/22 | N/A |
| Bard College | Small Hydroelectric Exemption for the Annandale Micro Hydropower Project | P-15021-000 | 9/22/21 | 12/1/22 | 435 days |
| City of Nashua | Amendment of Exemption for Jackson Mills Hydroelectric Project | P-7590-016 | N/A | 12/9/22 | N/A |
| Idaho Power Company | Non-Capacity Amendment of License for Hells Canyon Hydroelectric Project | P-1971-134 | 2/23/22 | 12/29/22 | 309 days |
| Central Rivers Power MA, LLC | Amendment of Terms and Conditions of Exemption for Dwight Hydroelectric Project, Red Bridge Hydroelectric Project, Putts Bridge Hydroelectric Project, and Indian Orchard Hydroelectric Project | P-10675-021, P-10676-027, P-10677-024, P-10678-026 | N/A | 1/23/23 | N/A |
| Aspinook Hydro, LLC | Relicensing of Wyre Wynd Hydropower Project | P-3472-024 | 1/11/22 | 2/2/23 | 387 days |

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| Cove Utility Commission | Licensing of Crooked Creek and Jim's Lake Hydroelectric Project | P-14514-003 | 9/28/22 | 3/15/23 | 168 days |
| Kings River Conservation District | Non-Capacity Amendment of License for Pine Flat Hydroelectric Project | P-2741-037 | N/A | 3/31/23 | N/A |
| PacifiCorp | Non-Capacity Amendment of License for North Umpqua Hydroelectric Project | P-1927-140 | N/A | 4/17/23 | N/A |
| Little Falls Hydroelectric Associates, LP | Relicensing of Little Falls Hydroelectric Project | P-3509-042 | 8/22/22 | 5/22/23 | 273 days |
| Brookfield White Pine Hydro, LLC | Relicensing of Errol Hydroelectric Project | P-3133-033 | 6/15/22 | 6/15/23 | 365 days |
| Watson Associates, L.P. | Relicensing of Watson Dam Project | P-6240-064 | 11/8/22 | 6/28/23 | 232 days |
| Placer County Water Agency | Non-Capacity Amendment of License for Duncan Creek Diversion Improvement Project | P-2079-111 | N/A | 6/29/23 | N/A |
| Total Average | | | | | 337.29 days 11 months |