

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Parts 153, 157, 375, and 385

(Docket No. RM06-1-000; Order No. 687)

Regulations Implementing the Energy Policy Act of 2005;
Coordinating the Processing of Federal Authorizations for Applications under Sections 3
and 7 of the Natural Gas Act and Maintaining a Complete Consolidated Record

(October 19, 2006)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule.

SUMMARY: Section 313 of the Energy Policy Act of 2005 (EPAct 2005)¹ amends section 15 of the Natural Gas Act (NGA)² to provide the Federal Energy Regulatory Commission (Commission) with additional authority to coordinate the processing of authorizations required under federal law for proposed natural gas projects subject to NGA sections 3 and 7 and to maintain a complete consolidated record of decisions with respect to such federal authorizations. This Final Rule promulgates regulations governing its exercise of this authority whereby the Commission will establish a schedule for the completion of reviews of requests for authorizations necessary for a proposed project and compile a consolidated record to be used in the event of review of actions by

¹ Pub. L. No. 109-58, 119 Stat. 594 (2005).

² 15 U.S.C. 717n (2005).

the Commission and other agencies in responding to requests for authorizations necessary for a proposed project.

EFFECTIVE DATE: The rule will become effective [insert date 60 days after publication in the **FEDERAL REGISTER**].

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeem G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

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Docket No. RM06-1-000

ORDER NO. 687

FINAL RULE

(October 19, 2006)

1. On May 18, 2006, the Commission issued a Notice of Proposed Rulemaking (NOPR) in Docket No. RM06-1-000,¹ requesting comments on proposed regulations to implement section 313 of the Energy Policy Act of 2005 (EPAAct 2005).² EPAAct 2005 section 313 amends the Natural Gas Act (NGA) to provide the Commission with the authority (1) to set a schedule for federal agencies, and state agencies acting under federally delegated authority, to reach a final decision on requests for federal authorizations necessary for proposed NGA section 3 or 7 gas projects and (2) to maintain a complete consolidated record of all decisions and actions by the Commission

¹ 71 FR 30632 (May 30 2006); FERC Stats. & Regs. ¶ 32,601 (2006); 115 FERC ¶ 61,203 (2006).

² Pub. L. No. 109-58, 119 Stat. 594 (2005).

and other agencies with respect to such authorizations. In this Final Rule, the Commission considers comments submitted in response to the NOPR, and as a result, makes certain modifications to the proposed regulatory revisions.

Background

2. The Commission authorizes the construction and operation of proposed natural gas projects under NGA sections 3 and 7.³ However, the Commission does not have jurisdiction over every aspect of each natural gas project. Hence, for a natural gas project to go forward, in addition to Commission approval, several different agencies must typically reach favorable findings regarding other aspects of the project. To better coordinate the activities of separate agencies with varying responsibilities over proposed natural gas projects, EPAct 2005 modified the Commission's role. Section 313 of EPAct 2005 directs the Commission (1) to establish a schedule for agencies to review requests for federal authorizations required for a project⁴ and (2) to compile a record of each

³ Under NGA section 7, the Commission has jurisdiction over the transportation or sale of natural gas in interstate commerce and the construction, acquisition, operation, and abandonment of facilities to transport natural gas in interstate commerce. Under NGA section 3(e), the Commission has exclusive authority to approve or deny an application for the siting, construction, expansion, or operation of a liquefied natural gas (LNG) terminal. The Secretary of the Department of Energy (DOE) has delegated to the Commission the authority under NGA section 3 to approve or disapprove applications for the siting, construction, and operation of facilities to import or export natural gas. The most recent delegation is in Delegation Order No. 00-004-00A, effective May 16, 2006.

⁴ EPAct 2005 section 313 describes "federal authorizations" as decisions or actions by a federal agency or official, "or State administrative agency or officer acting under delegated Federal authority," granting or denying requests for permits, certificates, opinions, approvals, and other authorizations. The United States Environmental

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agency's decision, together with the record of the Commission's decision, to serve as a consolidated record for the purpose of appeal, including judicial review.

3. On November 17, 2005, the Commission issued an order initially implementing the authority conferred by EAct 2005⁵ and delegating to the Director of OEP the authority to set schedules for agencies to act on requests for federal authorizations necessary for natural gas projects to ensure such requests are processed expeditiously. In that order, the Commission stated a subsequent rulemaking would codify the pertinent provisions of EAct 2005. To that end, the May 2006 NOPR set forth proposed regulatory revisions.

Protection Agency (EPA) asks what types of state actions would qualify as being under delegated federal authority. The Commission finds that a state action qualifies as an action under delegated federal authority if it is an action that (1) a state entity is permitted, approved, or directed to take under federal law and (2) provides the basis for a reasoned decision on a request for a federal authorization. The United States Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS) asks whether a federal authorization would include recommendations or biological opinions issued subsequent to consultations under the Magnuson-Stevens Fishery Conservation and Management Act and Endangered Species Act (ESA). To the extent recommendations and opinions are necessary for a federal agency, or state agency acting under federally delegated authority, to reach a decision on a request for a federal authorization that is needed for a proposed NGA section 3 or 7 project to go forward, the Commission interprets EAct 2005's mandate as encompassing such recommendations and opinions as "federal authorizations."

⁵ Coordinated Processing of NGA Section 3 and 7 Proceedings, 113 FERC ¶ 61,170 (2005). This Final Rule codifies this delegation of authority by revising § 375.308, Delegations to the Director of the Office of Energy Projects (OEP), to add a new § 375.308(bb), which delegates authority to the Director of OEP to establish schedules, consistent with federal law, for agencies to complete their analysis and decision making processes and issue decisions on requests for federal authorizations necessary for natural gas projects.

In this Final Rule, the Commission responds to comments concerning the NOPR, and adopts further regulatory revisions to implement its new responsibilities under EPCRA 2005.

Notice and Comment

4. Notice of the NOPR was published in the Federal Register on May 30, 2006.⁶ Comments on the NOPR were filed by Baker Botts, L.L.P. (Baker Botts); Cheniere Energy, Inc. (Cheniere); City of Fall River, Massachusetts; Coastal States Organization; Conservation Law Foundation; Delaware Department of Natural Resources and Environmental Control, Division of Soil & Water Conservation (Delaware DNR); U. S. Department of the Army Corps of Engineers (Army COE); Dominion Transmission, Inc., Dominion Cove Point LNG, LP, and Dominion South Pipeline Company, LP (Dominion); Duke Energy Transmission, LLC (Duke); United States Environmental Protection Agency (EPA); Interstate Natural Gas Association of America (INGAA); United States Department of the Interior (Interior); Islander East Pipeline Company, L.L.C. (Islander East); Mr. Mark Mendelson; Massachusetts Office of the Attorney General; Massachusetts Executive Office of Environmental Affairs (Massachusetts EOE); New Jersey Department of Environmental Protection (New Jersey DEP); Columbia Gas Transmission Corporation, Columbia Gulf Transmission Company, Crossroads Pipeline Company, Granite State Gas Transmission, Inc., and Central Kentucky Transmission Company (collectively NiSource); Oregon Coastal Management

⁶ 71 FR 30632 (May 30, 2006).

Program; United States Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS); and Williston Basin Interstate Pipeline Company (Williston).

Discussion

5. The comments raise objections to various aspects of the proposed regulatory revisions. In response, various aspects of the NOPR's proposed revisions are modified, as discussed below.

Electronic Submission of Information

6. There are several different events that trigger the obligation on the part of other agencies and officials to submit information to the Commission. In the NOPR, the Commission proposed all such information be submitted electronically, but requested that affected agencies and officials comment on whether electronic submission could prove impractical. Several agencies stated that they are not yet prepared to transmit information by electronic means. Consequently, to avoid any undue hardship, while stressing its preference to receive information via electronic means, the Commission removes the requirement to submit information by electronic means.

Coordinating Federal Authorizations

When to Submit Requests for Federal Authorizations

7. Proposed §§ 153.8 and 157.14 specify that an application filed with the Commission for a natural gas project under NGA section 3 or 7 must include:

A statement identifying each Federal authorization that the proposal will require; the Federal agency or officer, or State agency or officer acting

pursuant to delegated Federal authority, which will issue each authorization; the date each request for authorization was submitted; and the date by which final action on each Federal authorization has been requested or is expected.

The NOPR observed that if an application does not include this proposed new information statement, the Commission may deem the application incomplete.

8. Several commenters explain that it is impractical, if not impossible, to submit applications for all federal authorizations before or contemporaneously with the project application filed with the Commission. These commenters propose instead that a project sponsor be permitted to file an application with the Commission first; list the authorizations necessary for the new project; identify those authorizations for which applications have already been submitted and the dates upon which they were submitted; and then state the dates by which any outstanding authorization requests will be submitted.

9. The Commission observes that most applications to construct major new gas projects are filed with the Commission after the project sponsor has participated in the Commission's prefiling process. This prefiling period affords a project sponsor, Commission staff, and staff from other agencies the opportunity to identify which federal authorizations will be needed for a project, and ample time for the project sponsor to prepare requests for related federal authorizations in advance of filing an application with the Commission⁷ Thus, the prefiling process can establish coordination among the

⁷ The NOPR noted that project sponsors that have made use of the prefiling period and process to prepare and submit requests for federal authorizations to agencies before
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agencies responsible for reviewing a project proposal and diminish the chance that the Commission might find an application to be incomplete.

10. The Commission nevertheless acknowledges that there may be circumstances that preclude a project sponsor from presenting all requests for necessary federal authorizations by the time it files an application with the Commission.⁸ Therefore, §§ 153.8 and 157.14 of the Commission's regulations will be modified to provide for a sponsor to explain why requests for federal authorizations remain outstanding and state

an NGA application is filed with the Commission have been able to compress the time needed to obtain Commission authorization. In large part, this is because completion of the Commission's assessment of an application often rests on other agencies reaching favorable determinations on separate authorization requests. Dominion and Duke are concerned that the new filing requirement might force a project sponsor to devote undue resources to preparing to submit requests for related federal authorizations at the same time as an NGA application. The Commission believes the prefiling process can minimize the resources needed by a project sponsor by spacing out its submission of authorization requests over a period of several months.

⁸ Cheniere, for example, posits that an agency may refuse to accept a request for a federal authorization "through no fault of the applicant." Were this to occur, the project sponsor should inform the Commission, which can then inquire as to the circumstances. NMFS points out that with respect to certain federal authorizations, such as an affirmation of compliance with the Endangered Species Act or the National Historic Preservation Act, the project sponsor is not in a position to submit an authorization request, since a request to initiate consultation with the responsible agency must be submitted by the Commission. The Commission notes this does not relieve the project sponsor of its obligation, as described in Part 380 of the existing regulations, to develop and submit all necessary technical information. Baker Botts and INGAA call attention to difficulties that may be presented by compelling a project sponsor to file a permit under the Clean Air Act contemporaneously with an NGA section 3 or 7 application. Such difficulties should be alleviated by the modifications that this Final Rule makes to the filing requirements as proposed in the NOPR. Provided a project sponsor presents good cause for not submitting a particular authorization request by the time an application is submitted, the Commission stands ready to accept the application.

anticipated dates for submitting such requests. A project sponsor will now be required to state “the date each request for authorization was submitted; why any request has not been submitted and the date submission is expected; and the date by which final action on each Federal authorization has been requested or is expected.” For requests that remain outstanding at the time an application is filed, the Commission will review the reasons given, the projected dates of submission, and an applicant’s interactions with the agencies. The Commission may then accept the application for consideration, and based on the state of documents and studies needed to support prospective authorization requests, accept the projected submission dates as a basis for establishing a schedule.

Determining a Schedule for Federal Authorizations

11. Initially, upon receiving an application, the Commission issues a notice “within 10 days of filing,” in accordance with § 157.9 of its regulations,⁹ or rejects the application in accordance with § 157.8 of its regulations. In issuing a notice of an application, the Commission, or the Director of OEP acting pursuant to delegated authority, may also declare a schedule for final decisions on outstanding requests for federal authorizations. When a schedule is established, it will comply with agencies’ applicable schedules established by federal law.¹⁰ The NOPR stated that in the event the Commission or the

⁹ Section 157.9 is revised by this Final Rule to state that in calculating this deadline, only days during which the Commission is open for business are counted.

¹⁰ In response to a query by NMFS, the Commission states it interprets the reference in EPA Act 2005 section 313(c)(1)(B) to “federal law” to consist of schedules specified either in the United States Code or in the Code of Federal Regulations.

Director of OEP does not set a schedule for a particular project in the notice or at a later date, the default deadline for decisions by those agencies without applicable schedules established by federal law will be no later than 90 days after the issuance of the Commission's final environmental document on the proposed project, or if no environmental document is issued, then no later than 90 days after issuance of a final order.

12. Commenters point out that if no schedule is included in the notice of an application, agencies are left to wonder whether a project-specific schedule will be issued at some later date, or whether silence indicates the default deadline applies. The Commission acknowledges the desirability of informing agencies in a timely manner of the schedule that will apply in each case. Accordingly, the Commission will adopt a different procedural approach, as described below.

13. The NOPR proposed requiring that agency action on authorization requests be completed within 90 days of the issuance of the Commission's final environmental document in a proceeding, or if an environmental document were not prepared, then within 90 days of the issuance of a final Commission order. Previously, the Commission has not always issued its environmental assessment (EA) at the time of its completion. Going forward, the Commission commits to issue its final environmental document in every proceeding by placing it in the public record. In addition, going forward, the Commission commits to issuing a notice within 90 days of the notice of an application describing the schedule that will apply to the environmental review process conducted by

the Commission to ensure compliance with the National Environmental Policy Act of 1969 (NEPA).¹¹ This notice of the schedule for the environmental review will state, among other milestones, the anticipated date for the Commission's completion of its EA or final environmental impact statement (EIS).¹² This NEPA notice will thus serve to inform agencies without a schedule established by federal law of the projected date by which they are to reach a decision on requested authorizations, i.e., within 90 days after the anticipated issuance of the Commission's EA or final EIS. Section 157.9 is revised accordingly.

14. Under this approach, there is no longer any distinction – as was discussed in the NOPR – between a “default” and a “project-specific” schedule. For agencies without a schedule established by federal law, the deadline for a final decision will follow from the date the Commission issues its final environmental document by placing it in the public record, with the anticipated issuance date stated in the NEPA notice. However, this anticipated issuance date is subject to change. As explained in the NOPR, during the course of considering an application or a request for a federal authorization, unanticipated issues and circumstances can arise and affect the time needed to complete the review.

¹¹ 42 U.S.C. 4321-4347 (2005).

¹² It has been the Commission's experience that in processing applications for certain minor and routine projects, the Commission's assessment, including its NEPA review, can often be completed within 90 days. For such projects, the Commission will either include a notice of the environmental schedule in conjunction with the notice of the application (i.e., the initial notice issued within 10 days of an application's being filed with the Commission), or will issue a separate notice of the environmental schedule shortly thereafter.

The Commission will monitor such changed circumstances, and may find it appropriate to revise the milestones set out in its initial schedule for its environmental review.¹³ If the Commission does so, it will issue a notice updating the milestones associated with its environmental review process. Any revision that alters the date that the Commission anticipates issuing its EA or final EIS will correspondingly shift the projected 90-day deadline for agencies without a schedule established by federal law to reach a final decision.

15. As described above, the Commission will now issue a notice describing the schedule for its environmental review as a part of, or within 90 days of, its initial notice of an application. Therefore, agencies will know, relatively early in the processing of all applications, where they stand with respect to due dates for their final decisions on requests for federal authorizations.¹⁴

¹³ This flexibility should alleviate the concern of commenters such as the City of Fall River, Massachusetts, regarding situations where apparently straightforward issues are discovered during the course of analysis to be more complex and time-consuming than originally anticipated.

¹⁴ The New Jersey DEP recommends that each state agency reviewing a request for a federal authorization be provided with formal notice of the date the Commission issues a final environmental document, arguing that “[w]ithout formal notice . . . a State agency will not know that the 90 day review period for a decision has begun.” New Jersey DEP’s Comments at 1 (July 28, 2006). In view of the Commission commitment to issue a formal notice of the schedule for the environmental review, agencies should have adequate notice of the anticipated start date of the last 90 days of the review period applicable to those agencies without a schedule set by federal law. State and federal agencies and officers are urged to make use of the Commission’s eSubscription service as a means to monitor documents submitted in a proceeding, updates, and the date of issuance of the Commission’s EA or final EIS.

16. Commenters expressed the concern that the Commission could reach a decision on a schedule for agency action without first considering agency comments on authorization requests. As discussed below, agencies' reports on authorization requests will still be due within 30 days of the receipt of such requests. In addition, it is expected that project sponsors will submit as many requests for necessary federal authorizations as possible by the time an application is filed with the Commission. Therefore, in most cases the Commission will have approximately 60 days to consider agency comments in advance of issuing the notice of its schedule for the environmental review, enabling the Commission to review agencies' input in setting the milestones for the completion of the Commission's environmental review.¹⁵

17. The Conservation Law Foundation requests doubling the 90 days following the issuance of the Commission's final environmental document to 180 days, whereas INGAA and interstate pipelines promote reducing the time to 30 days. The Conservation Law Foundation points out that a final decision on a request for a necessary federal

¹⁵ As noted above, in minor and routine cases where issues that might complicate agencies' reviews are unlikely to arise, the Commission may issue notice of its environmental schedule in its initial notice of the filing of an application or shortly thereafter. However, if concerns regarding authorization requests are subsequently raised in agency reports to the Commission, the Commission would then reconsider the given time frames. In determining whether a proposal qualifies as minor and routine, and thereby suitable for processing on an accelerated schedule, EPA recommends the Commission first consult with the other agencies that will be involved. The Commission expects such projects to be readily identifiable or identified in the course of a pre-filing consultation. The Commission will not identify a proposal as a candidate for accelerated processing unless it is confident of consensus among agencies that it merits such treatment. An agency may object to any schedule set by the Commission, and the Commission will reassess the grounds for its determination.

authorization may not be reached within 90 days of the issuance of the EA or EIS. The Commission acknowledges that although infrequent, this can occur. However, the Commission expects that project sponsors' increasing use of the Commission's pre-filing consultation process, in conjunction with the regulatory revisions instituted herein, will eliminate such delayed authorization decisions.¹⁶ Further, the Commission believes that providing the 180 days requested would be incompatible with the EPA Act 2005 mandate to "ensure expeditious completion" of NGA section 3 and 7 proceedings.¹⁷ On the other hand, the Commission finds no reason to adopt a 30-day requirement. Comments in favor advocate harmonizing the amount of time provided for agencies to act with the 30 days from issuance of a Commission order currently provided for filing a request for rehearing or accepting a certificate. The Commission sees no need to do so, as there is no evidence that project sponsors are currently hindered in reaching decisions on whether to seek rehearing of the Commission's orders or accept a certificate when other agencies take more than 30 days after an order to complete action on authorization requests. The

¹⁶ The Commission notes that for the most part, instances in which final decisions on requests for necessary federal authorizations have not been reached within the 90-day time frame designated herein, have involved authorizations for which a schedule for agency action is established by federal law, *e.g.*, a Coastal Zone Management Act (CZMA) consistency determination or a water quality certification under section 401 of the Clean Water Act (CWA). Nothing in this Final Rule will alter schedules set by federal law.

¹⁷ EPA Act 2005 section 313(c)(1)(A) (2005).

Commission believes that the 90 days provided strikes an appropriate balance between providing adequate time for agencies' deliberation and avoiding delay to project sponsors.

18. The NOPR observed that:

In some cases – for example, when there is a demonstrated need to have a new natural gas project in service by a certain date – the Commission may set deadlines that are shorter than the maximum times permitted under federal law. In such cases, the Commission recognizes that compliance with its specified deadlines would be voluntary for agencies with deadlines determined by federal law.¹⁸

19. Several commenters contend this observation conflicts with federal law. In setting a schedule for agencies to conclude their reviews of requests for federal authorization, the Commission has no ability to contract or expand a schedule established by federal law. Consequently, there can be no conflict between a schedule set by the Commission and a schedule set by federal law.¹⁹ The Commission's observation in the NOPR was no more than an acknowledgment of current practice. Agencies frequently complete their review of certain project proposals – most often for modest and uncontroversial facilities – well

¹⁸ 71 FR 30632 at 30635 (May 30 2006); FERC Stats. & Regs. ¶ 32,601 at 32,558 (2006); 115 FERC ¶ 61,203 at P 17 (2006).

¹⁹ Baker Botts raises a related issue in requesting clarification that an agency presented with an authorization request must not be permitted to await the outcome of another agency's action prior to commencing its own review. While such an approach might be viewed as contrary to EPA Act 2005's expressed intent to expedite the review process for proposed gas projects, provided the agency in waiting is able to meet its deadline to reach a final decision – be it established by federal law or by the Commission – there would not necessarily be cause to seek to compel the recalcitrant agency to commence its review sooner.

in advance of deadlines allotted by federal law. The NOPR stated the aspiration that agencies might continue to do so, recognizing that in exercising its new authority to set schedules, the Commission can only encourage agencies to act in advance of deadlines set by federal law, it cannot compel them to do so.

20. The Army COE states that the deadlines established by the Commission for final agency action will be “voluntary and non-binding.”²⁰ This would be the case if, as discussed above, the schedule set by the Commission calling for a shorter time frame did not meet the EAct 2005 requirement that it “comply with applicable schedules established by Federal law.”²¹ However, if an agency without a schedule established by federal law fails to meet a deadline set by the Commission, this “failure of the agency to take action . . . in accordance with the Commission schedule established pursuant to section 15(c) shall be considered inconsistent with Federal Law,” and as a result, can be brought to the attention of the United States Court of Appeals, which can “remand the proceeding to the agency to take appropriate action consistent with the order of the Court” by the “schedule and deadline for the agency to act on remand” that will be set by the court.²²

²⁰ Army COE’s Comments at 3 (July 31, 2006).

²¹ EAct 2005 section 313(c)(1)(B) (2005).

²² EAct 2005 section 313(d)(2) and (3). Note this described civil action for the review of an agency’s alleged failure to act on a requested authorization does not apply to CZMA determinations, since the Department of Commerce, not a federal court, is the body to review a failure to act on, or the outcome of, a CZMA request. This section of
(continued...)

**Informing the Commission upon Receipt of
an Authorization Request**

21. New § 385.2013 specifies that within 30 days of receiving an authorization request, an agency must inform the Commission of: (1) whether the agency deems the application to be ready for processing and, if not, what additional information or materials will be necessary to assess the merits of the request; (2) the time the agency will allot the applicant to provide the necessary additional information or materials; (3) what, if any, studies will be necessary in order to evaluate the request; (4) the anticipated effective date of the agency's decision; and (5) if applicable, the schedule set forth by federal law for the agency to act. Further, if an agency asks for additional information, the agency is to provide the Commission with a copy of its data request.²³

22. Commenters claim that 30 days is an unreasonably short time to be able to render a meaningful assessment of an authorization request. The Commission recognizes that 30 days will often be insufficient for agencies to reach definitive conclusions on each of

EPAAct 2005 was recently discussed and applied in Islander East Pipeline Co. LLC v. Connecticut Department of Environmental Protection, Docket No. 05-4139-ag (2d Cir. Oct. 5, 2006); the court found a state agency acting under delegated federal authority had not conducted a complete and reasoned review of a request for a federal authorization, and required the state agency to either do so within 75 days or abdicate its delegated federal authority.

²³ This establishes the minimum information required of an agency. EPA, Duke, and Islander East suggest a more collaborative approach to establish a schedule. To this end, the Commission invites agencies to go beyond the requisite minimum and provide additional information, which the Commission will consider in exercising its scheduling responsibilities. Further, in determining a schedule appropriate to a particular application, Commission takes into account not only agencies' input but also the project sponsor's proposed construction schedule and in-service date.

the stipulated aspects of an authorization request. But that is not the intent. Instead, the information submission is intended to give the Commission an overview to enable it to determine a realistic timetable for the environmental review process. The Commission recognizes that agencies' reports will necessarily be provisional and subject to change, and will take this into account both when first determining a schedule for its NEPA review, and thereafter, to take into account agencies' progress in processing authorization requests.

23. For the purpose of measuring the time for an agency to act on an authorization request, in the NOPR the Commission explained the clock begins to run on the day a request is submitted to the agency. Interior questions whether this would be the day a request is sent or the day it is received; the Commission clarifies that the day the agency receives a request is the first day counted. This is unlikely to be the day an agency takes official notice that a complete application has been received and is ready for processing; rather, this will be the first day an agency is in receipt of a formal written request by a project sponsor for an authorization needed for a prospective NGA section 3 or 7 project.

24. Commenters are concerned with the prospect that an agency might receive a cursory authorization request that could not be evaluated absent additional information. The NOPR stated that if an agency deems a request to be incomplete, and the project sponsor fails to provide the necessary information in time for the agency to reach a decision by the Commission's scheduled deadline, then the agency may deny the

request.²⁴ In turn, the Commission may deny the application before it, or authorization to commence construction, due to the project sponsor's failure to obtain a necessary federal authorization. The Commission reiterates that whether an agency finds a request complete has no bearing on the agency's allotted response time. That said, the Commission does not expect to have to frequently reject NGA applications due to imperfections in requests for related federal authorizations in view of the decision to revise the procedural schedule, as described above, to tie agencies' deadlines to issuance of the EA or final EIS. This approach to scheduling should give agencies and applicants adequate advance notice of when decisions on requests for federal authorizations will be due, and motivate project sponsors to make all necessary information available in order for agencies to reach timely decisions on the merits.

25. The Army COE asks if submitting an electronic copy to the Commission of the agency's response to a project sponsor's authorization request would satisfy the § 385.2013 reporting requirement. It would, provided the submission contains the

²⁴ This presumably would be the outcome with respect to an authorization required for a project if, as the Oregon Coastal Management Program and Coastal States Organization speculate, the agency is unable to obtain all the information needed to make an appropriate assessment of the proposal in time to meet the scheduled deadline for a final decision. Dominion requests that if an agency informs the Commission that a project sponsor has not adequately supported its request, then "the Commission will give the applicant an opportunity to respond and cure the alleged deficiencies." Dominion's Comments at 11 (July 31, 2006). In the event of a disagreement regarding the adequacy of the contents of a request for a federal authorization, the Commission may find reason to revise an agency's deadline for a final decision. However, although the Commission implores project sponsors and agencies to work cooperatively, it cannot compel them to do so. An agency retains the discretion to reject a request on the grounds that information necessary to reach a decision is lacking.

specified information; moreover, as discussed herein, submission to the Commission need not be by electronic means. Regardless of whether an agency's submission is made electronically or by paper copy, it should be filed in the PF or CP docket number, if available, assigned to the project sponsor's application to the Commission.

Procedural Clarifications

26. Once an application is filed with the Commission and a schedule is established, if a project sponsor seeks to make a modification to its proposal that is material to one or more of its requested federal authorizations, the project sponsor should file a description of the modification with the Commission – regardless of whether the Commission has approved the application or whether the modification would require amendment of the proposal before the Commission. NiSource requests the Commission clarify that a material modification would include a modification to an aspect of the proposal that would substantially change the overall environmental impacts. The Commission accepts this characterization. Following a project sponsor's notice to the Commission of a material modification, it will be within the discretion of the Director of OEP to determine whether the modification will make it impossible for an agency to reach a final decision on a request for a federal authorization within 90 days of the issuance of the Commission's final environmental document.²⁵ If so, pursuant to § 375.308, the Director

²⁵ As one such instance, the Army COE describes circumstances where a project sponsor made a material modification that impacted the authorization request under consideration by the Army COE after the Commission's final EIS was completed. Army COE Comments at 3 (July 31, 2006). In such a case, the project sponsor should inform

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of OEP may establish a revised, separate deadline for a final decision by that agency.

Finally, a material modification to a project pending approval by the Commission may merit revising and re-noticing the schedule for the environmental review. The schedule for agencies to complete their reviews would then be adjusted in accordance with the revised schedule for completing the NEPA process.

27. The New Jersey DEP suggests that in submitting a request for a necessary federal authorization for an NGA section 3 or 7 project, the project sponsor identify the request as such. The Commission endorses this suggestion, and urges project sponsors to include the Commission's applicable PF or CP docket number, if available, in its authorization request. Identifying the proposed project in this manner, and informing the agency that the request is being submitted in conjunction with an application to the Commission, will alert the agency of the need to inform the Commission of its receipt of the request, pursuant to new § 385.2013. Agencies, in turn, in submitting a report to the Commission on the status of a requested federal authorization, should identify the party submitting the request, identify the proposed project, and include, if available, the applicable PF or CP docket number.

28. The New Jersey DEP and Delaware DNR propose making the project sponsor, rather than the agency receiving a request for a federal authorization, responsible for submitting to the Commission the agency's initial 30-day status report and any data

the Commission, and where appropriate, a revised, separate deadline will be established for the affected agency.

requests. The Commission sees disadvantages in having the project sponsor assume this responsibility. In part, the aim of the 30-day report is to open, or extend, the dialogue between the agency and the Commission, since the Commission expects to confer with the responsible agencies over the course of the NEPA review process. Initial contact would not necessarily be established early were the project sponsor to act as an intermediary between agencies and the Commission. The burden on agencies to copy the Commission on a data request sent to a project sponsor is minimal; thus, the Commission finds that rather than having project sponsors receiving an agency's data request forward it on, it is better, in terms of timing and simplicity, to have the agency that generates the data request submit it directly to the Commission.

29. NMFS suggests the Commission serve as a central point of contact linking project sponsors to agencies. The Commission sees no benefit to placing itself between the company seeking to develop a new project and the agencies responsible for examining aspects of the proposal. As is, Commission staff maintains communication with the project sponsor and agencies from the receipt of a request to make use of the prefiling process through issuance of the final decision.

30. The Commission declares, in response to questions raised by INGAA and Islander East, that the procedures described herein do not apply to activities that do not involve "an application for authorization under section 3 or a certificate of public convenience

and necessity under section 7.”²⁶ For example, auxiliary installations and the replacement of facilities under § 2.55, and activities authorized under the blanket certificate provisions of Part 157, subpart F, of the Commission’s regulations, and certain activities undertaken in response to a gas emergency, do not require authorization under NGA section 3 or issuance of a certificate under NGA section 7.

31. When a request to authorize a proposed project under the blanket certificate provisions is protested, and the protest is not either dismissed or resolved and withdrawn, the “request filed by the certificate holder shall be treated as an application for section 7 authorization for the particular activity.”²⁷ However, although a protested blanket project proposal is treated as an application for a case-specific certificate, once the merits of the issues raised in the protest are addressed, and provided the proposal is not denied, the project is authorized under the project sponsor’s existing blanket certificate.²⁸ A project sponsor that makes a prior notice filing for a proposed project to be constructed under blanket certificate authority is acting under the authority of its existing blanket certificate issued pursuant to NGA section 7(c). Consequently, to undertake projects that comply with the blanket certificates provisions, the project sponsor does not need to obtain an additional, separate NGA section 7(c) certificate. Therefore, the new regulatory

²⁶ EPA Act 2005 section 313(a)(3) (2005).

²⁷ 18 CFR 157.205(f) (2006).

²⁸ See, e.g., Texas Eastern Transmission Corp., 76 FERC ¶ 61,178 (1996).

requirements promulgated herein pursuant to EAct 2005 will not apply to projects authorized pursuant to the blanket certificate program.

32. The City of Fall River, Massachusetts, the Massachusetts EOEA, and the Massachusetts Attorney General seek clarification on how the federal NEPA review and the environmental review undertaken by a state or the District of Columbia may interact. The different environmental reviews proceed on separate jurisdictional tracks, each on its own schedule and each arriving at its own independent findings. However, as a practical matter, if federal and state agencies are able to work in tandem, the result can be greater efficiencies for all concerned. Accordingly, where possible, the Commission coordinates its efforts with state agencies when assessing the environmental impacts of a proposed project and intends to continue to do so going forward.

33. Islander East seeks clarification on how the revised regulations will apply to pending projects. The Commission, as a general matter, will not apply the §§ 153.8 and 157.14 filing requirements for project sponsors, or the § 385.2013 reporting requirements for agencies, to applications filed prior to the effective date of this rule. That said, as noted above, the Director of OEP currently has delegated authority to establish schedules in pending proceedings,²⁹ and if there is cause to do so, the Director of OEP may establish a schedule applicable to an ongoing proceeding.

34. Mr. Mark Mendelson is concerned that the Commission is creating a “standardized” schedule that will not allow for an adequate assessment of safety risks and

²⁹ See note 7.

long-term project impacts of proposed gas projects on individuals and communities. Mr. Mendelson expresses general dissatisfaction regarding the content, timing, and availability of information concerning proposed projects. He contends that affected individuals do not always receive adequate notice of proposed projects and suggests all potential stakeholders be notified by mail via the United States Postal Service of potential hazards or risks in their general locale posed by a proposed project.

35. The Commission's new reporting requirements and commitment to issue a notice of the environmental review schedule should serve to inform potentially interested persons of a pending project proposal. The Commission expects that its authority to establish schedules will lead to tailoring milestones appropriate to the particularities of proposed projects, and not to a one-size-fits-all standard. Mr. Mendelson's proposal to review and revise the existing public notice requirements is beyond the scope of and is not germane to the matters being addressed in this rulemaking proceeding. However, any affected landowner that does not receive notice of a proposed project in a docketed proceeding as specified in the Commission's regulations, or any individual that suspects the public notice provided is procedurally insufficient or substantively incomplete, can bring such concerns to the Commission's attention and the specific circumstances will be investigated.

Consolidated Record

36. Section 313 of EPAAct 2005 directs the Commission to "maintain a complete consolidated record of all decisions made or actions taken by the Commission or by a

Federal administrative agency or officer (or State administrative agency or officer acting under delegated Federal authority) with respect to any Federal authorization.”

37. The NOPR proposed to require agencies and officers issuing decisions or approvals necessary for proposed projects under NGA sections 3 and 7 to provide the Commission with a copy of the final decision reached or action taken, or a summary thereof, within three days of issuance of a final decision or action. The Commission proposed requiring agencies and officers to file an index of the record, identifying all documents and materials — including pleadings, comments, evidence, exhibits, transcripts of testimony, project alternatives (including alternative routings), studies, and maps — relevant to the decision, within three days of issuance of a final decision or action.

38. Commenters object to the proposed requirement that a copy of the decision and an index to the record be filed within three days of the decision and suggest that the Commission allow 30 days for the filing of the decision and record index. In addition to promoting a 30-day interval, the Conservation Law Foundation recommends the Commission reimburse agencies for reasonable costs incurred in providing the index.

39. The Commission accepts the claim that three days may not provide every agency with adequate time to organize and send the requested information – although, if an agency maintains and updates its index throughout the course of its proceeding, all it need do when a decision is issued is add the decision, or a summary thereof, to the index and submit it to the Commission. The Commission anticipated agencies’ submission of

the requested information would be merely ministerial, i.e., that the information would be available and electronically transmittable – or at least, easily duplicated and then sent – on the same day a final decision was reached. Commenters persuasively argue that this is not the case. In any event, the Commission does not believe that it is necessary to receive an agency’s information within three days of a final decision in order to satisfy the EAct 2005 mandate to maintain a complete consolidated record. Accordingly, the Final Rule revises the reporting requirement to provide agencies and officers 30 days, not three, to submit a final decision, or summary thereof, and index to the Commission. Further, while the Commission encourages electronic submissions, the proposed regulations are modified to provide the option to make paper filings with the Commission.³⁰ In view of this modification to the means of filing, the Commission will modify the time provided for agencies to file a copy of data requests with the Commission, extending it from three days to 10 business days.

40. The Commission finds no cause to adopt the Conservation Law Foundation’s request to provide reimbursement to agencies for expenses related to compliance with the provisions of this rule. Compliance is mandatory pursuant to the authority provided to the Commission by EAct 2005. Further, in view of the revision above regarding the time permitted and means of submission, and the clarification below regarding the

³⁰ As is currently the case, agencies will be expected to conform their filings to the requirements of 18 CFR 385.2003, to the extent that they are able.

contents of the index, the Commission expects the additional cost incurred by agencies to meet these new reporting requirements will not be unduly burdensome.

41. Commenters' objections to submitting an index appear to stem in part from an overly broad interpretation of what this index must include. The Commission clarifies that the index need not summarize the contents of each item in the agency's record; rather, the index can be any method of notation capable of identifying each item in the record sufficiently to allow a reviewing body to select items of relevance to an issue on appeal. The Oregon Coastal Management Program observes that it typically relies on and references the outcome of multiple state and local actions, but does not include in its record the underlying documents that make up the record in those other actions. There is no need for agencies that follow such an approach to make any adjustment. Any methodology and recordkeeping that an agency now employs that is sufficient to serve as the basis for appeals or reviews is an acceptable "index" for the purposes of the consolidated record. Note that in filing an index, agencies should title the submission "Consolidated Record" and include a prominent reference on the first page to the docket number applied to the Commission proceeding which gave rise to the request for agency authorization.

42. Baker Botts requests the Commission require that agencies provide the Commission with their full record, and not just an index thereto. The Commission finds no cause to require agencies to reproduce and transmit the contents of their entire record to the Commission. Only in the event of appeal will there be any call to view the original

or duplicate materials, and even then it is unlikely anything other than a limited subset of the record will be relevant. Therefore, provided an index is prepared, and original materials are retained and available for a minimum of three years, or until an appeal or review is concluded, there should be no delay in producing the portion of an agency's record requested by a reviewing entity.

43. The Army COE points out that when it issues a requested permit, the permit with terms and conditions is sent to the applicant, which has 60 days to appeal the terms and conditions if it chooses to do so; if the permit is denied, the applicant may appeal the denial. The Army COE asks that the date of final agency action for purposes of providing the record to the Commission be "at the end of any appeals process."

44. The Commission expects that individual agencies' own regulations will determine when their actions are considered "final" and thereby start the 30-day clock for filing their decisions and indices with the Commission. However, the Commission will consider a decision or action on a request for a federal authorization to be "final," and consequently subject to the 30-day deadline for filing with the Commission, if the project sponsor submitting the request can rely on an affirmative determination as sufficient authority to proceed. In other words, the agency's deliberation must go beyond verification that a request is complete, or a preliminary determination, or an agency decision that approves a project sponsor's application but makes its right to proceed contingent on the outcome of certain agency review or appeal processes; *i.e.*, the outcome of the agency's final decision or action must grant, condition, or deny the applicant's

requested authorization. At this point, the 30-day period begins for an agency to provide the Commission with a copy of its decision, or a summary, and an index to its record in the proceeding. The 30-day period should permit the Commission to receive agencies' decisions and indices in time to compile a complete consolidated record for the purposes of judicial review (or in the case of a CZMA determination, review by the Department of Commerce).³¹

45. The Army COE asserts the Commission should forward Freedom of Information Act (FOIA) requests to agencies, instead of preparing a response using the consolidated record. The Commission clarifies that FOIA requests should be submitted directly to the agency responsible for generating the information in question. While an agency's index filed with the Commission may be useful in identifying records relevant to a FOIA request, the Commission will not be capable of effectively responding to FOIA requests, or other types of requests, that concern the substantive matters of another agency's proceeding. Further, the Commission's responsibilities under EPOA 2005 do not include compiling documents to respond to FOIA requests. The Commission does not expect to receive or respond to FOIA requests, unless the information sought is part of the Commission's own record of its deliberations in a particular proceeding.

³¹ The Commission notes that when it issues an order granting a project sponsor a section 7 certificate or section 3 authorization under the NGA to construct gas facilities, clearance to commence construction generally is withheld until the project sponsor has obtained other necessary authorizations from other agencies. However, once such authorizations have been obtained by the project sponsor, the project sponsor generally is granted clearance to commence construction, notwithstanding any pending requests for rehearing.

Information Collection Statement

46. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting, record keeping, and public disclosure (collections of information) requirements imposed by agency rules.³² Pursuant to OMB regulations, the Commission is submitting these reporting requirements to OMB for its review and approval under section 3507(d) of the Paperwork Reduction Act of 1995 (PRA).³³ Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of this rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number. The information collection requirements in this Final Rule are: FERC-539, FERC-537, FERC-606, and FERC-607. These are mandatory reporting requirements.

Public Reporting Burden

47. The Commission did not receive specific comments concerning its burden estimates and uses the same estimates here in the Final Rule. Several commenters expressed concern with the burden that would be imposed if information was required to be submitted under the initially proposed time frame. However, as discussed herein, the Commission has taken these comments into consideration and extended the time frame for submitting information.

³² 5 CFR 1320.11 (2006).

³³ 44 U.S.C. 3507(d) (2005).

<u>Data Collection</u>	<u>Number of Respondents</u>	<u>Number of Responses</u>	<u>Hours per Response</u>	<u>Total Hours</u>
FERC-537	76	815	0.5	408
FERC-539	12	12	0.5	6
FERC-606	48	1702	4.4	7,489
FERC-607	48	1654	6.3	10,423
Totals				18,326

Total Annual Hours for Collection: 18,326.

Information Collection Costs: Because of the regional differences and the various staffing levels that will be involved in preparing the documentation (legal, technical, and support), the Commission is using an hourly rate of \$150 to estimate the costs for filing and other administrative processes (reviewing instructions, searching data sources, completing and transmitting the collection of information). The estimated cost is \$2,748,900.

Title: FERC-539 “Gas Pipeline Certificates: Import/Export Related;” FERC-537 “Gas Pipeline Certificates: Construction, Acquisition and Abandonment;” FERC-606 “Gas Pipeline Certificates: Notification of request for Federal Authorization;” and FERC-607 “Report on Decision or Action on Request for Federal Authorization.”

Action: Data Collection.

OMB Control No.: FERC-539 (1902-0062); FERC-537 (1902-0060); FERC-606 & FERC-607 (To be determined).

Respondents: Natural gas pipeline companies and state agencies and officers.

Frequency of Responses: On occasion.

Necessity of Information: EAct 2005 section 313 directs the Commission to

(1) establish schedules for state and federal agencies and officers to act on requests for federal authorizations required for natural gas projects under sections 3 and 7 of the NGA and (2) maintain a complete consolidated record of all decisions or actions taken by the Commission and other agencies and officers with respect to such authorizations. The Commission considers the regulatory provisions adopted herein to be the minimum necessary for the Commission to implement the new authority provided by EAct 2005.

48. For information regarding the requirements of the collections of information and the associated burden estimates, including suggestions for reducing this burden, please send comments to the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 (Attention: Michael Miller, Office of the Executive Director), or send e-mail to michael.miller@ferc.gov, or to the Office of Management and Budget (Attention: Desk Officer for the Federal Energy Regulatory Commission), by fax to (202) 395-7285, or by e-mail to oir_submission@omb.eop.gov.

Environmental Analysis

49. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect

on the human environment.³⁴ No environmental consideration is raised by promulgation of a rule that is procedural in nature or that does not substantially change the effect of legislation or regulations being amended.³⁵ The regulations adopted herein require authorizing agencies to provide the Commission with copies or summaries of decisions and indices to the records of those decisions in cases arising under the Commission's jurisdiction under the Natural Gas Act. These are minor procedural changes to the Commission's existing regulations and do not substantially change the effect of any legislation or regulations. Nor do they substantially change any regulatory requirements to which pipeline companies or authorizing agencies are currently subject. Accordingly, the preparation of an environmental document is not required.

Regulatory Flexibility Act Certification

50. The Regulatory Flexibility Act of 1980 (RFA)³⁶ generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such an analysis if proposed regulations would not have such an effect.

³⁴ Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986-1990 ¶ 30,783 (1987).

³⁵ 18 CFR 380.4(a)(2)(ii) (2006).

³⁶ 5 U.S.C. 601-612 (2005).

51. Although it appears that agencies affected by the rule promulgated today do not fall within the RFA's definition of "small governmental jurisdiction"³⁷ or its definition of "small entities,"³⁸ the Commission is nevertheless mindful of costs and burdens to be imposed upon agencies required to provide copies of decisions and indexes to the record in federal authorization proceedings. In response to commenters that observe certain agencies may lack the resources needed to comply with the proposed three-day deadline for filing and the proposed requirement for electronic filing, the Commission is adopting alternative requirements to take into account the resources available to the agencies to accommodate the limited resources of small entities.³⁹ The three-day deadline is extended to 30 days, and electronic filing, while still the preferred option, is no longer required.

52. Most of the natural gas companies regulated by the Commission do not fall within the RFA's definition of a small entity.⁴⁰ Approximately 114 natural gas companies are

³⁷ 5 U.S.C. 601(5) (2005) provides that "the term 'small governmental jurisdiction' means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a populations of less than fifty thousand."

³⁸ 5 U.S.C. 601(6) (2005) provides that "the term 'small entity' shall have the same meaning as the terms 'small business,' 'small organization,' and 'small governmental jurisdiction.'"

³⁹ 5 U.S.C. 603 (c) (1) and (2) (2005).

⁴⁰ See 5 U.S.C. 601(3) (2005), citing section 3 of the Small Business Act, 15 U.S.C. 623 (2005). Section 3 of the SBA defines a "small business concern" as a business which is independently owned and operated and which is not dominant in its field of operation. The Small Business Size Standards component of the North American (continued...)

potential respondents subject to the requirements adopted by this rule. For the year 2004 (the most recent year for which information is available), 32 companies had annual revenues of less than \$6.5 million. The procedural modifications enacted herein should have no significant economic impact on those entities – be they large or small – subject to the Commission’s NGA jurisdiction. In view of these considerations, the Commission certifies that this Final Rule’s amendments to the regulations will not have a significant impact on a substantial number of small entities.

Document Availability

53. In addition to publishing the full text of this document in the Federal Register, the Commission provides all interested persons an opportunity to view and print the contents of this document via the Internet through FERC's Home Page (<http://www.ferc.gov>) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, N.E., Room 2A, Washington D.C. 20426. From FERC's Home Page on the Internet, this information is available in the Commission’s document management system, eLibrary. The full text of this document is available in eLibrary in PDF and Microsoft Word format for viewing, printing, and downloading. To access this document in eLibrary, type RM06-1 in the docket number field.

Industry Classification System defines a small natural gas pipeline company as one that transports natural gas and whose annual receipts (total income plus cost of goods sold) did not exceed \$6.5 million for the previous year.

54. User assistance is available for eLibrary and the Commission's website during normal business hours at (202) 502-8222 or the Public Reference Room at (202) 502-8371 Press 0, TTY (202)502-8659. E-Mail the Public Reference Room at public.referenceroom@ferc.gov.

EFFECTIVE DATE AND CONGRESSIONAL NOTIFICATION

55. These regulations are effective [insert date 60 days after publication in the **FEDERAL REGISTER**].

56. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a "major rule" as defined in Section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.⁴¹

List of Subjects

18 CFR Part 153

Exports, Imports, Natural gas, Reporting and recordkeeping requirements

18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements

18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act

⁴¹ 5 U.S.C. 804(2) (2005).

18 CFR Part 385

Administrative practice and procedure, Electric power, Penalties, Pipelines, Reporting and recordkeeping requirements

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

In consideration of the foregoing, the Commission amends parts 153, 157, 375, and 385, Chapter I, Title 18, Code of Federal Regulations, as follows:

PART 153 -- APPLICATIONS FOR AUTHORIZATION TO CONSTRUCT, OPERATE, OR MODIFY FACILITIES USED FOR THE EXPORT OR IMPORT OF NATURAL GAS

1. The authority citation for part 153 continues to read as follows:

Authority: 15 U.S.C. 717b, 717o; E.O. 10485, 3 CFR, 1949-1953 Comp., p. 970, as amended by E.O. 12038, 3 CFR, 1978 Comp., p. 136, DOE Delegation Order No. 0204-112, 49 FR 6684 (February 22, 1984).

2. In subpart B, § 153.4 is added to read as follows:

§ 153.4 General requirements.

The procedures in §§ 157.5, 157.6, 157.8, 157.9, 157.10, 157.11, and 157.12 of this chapter are applicable to the applications described in this subpart.

3. In § 153.8:

a. The word “and” is removed from the end of paragraph (a)(7);

b. The period is removed from the end of paragraph (a)(8), and “; and” is added in its place; and

c. Paragraph (a)(9) is added to read as follows:

§ 153.8 Required exhibits.

(a) * * *

(9) Exhibit H. A statement identifying each Federal authorization that the proposal will require; the Federal agency or officer, or State agency or officer acting pursuant to delegated Federal authority, that will issue each required authorization; the date each request for authorization was submitted; why any request was not submitted and the date submission is expected; and the date by which final action on each Federal authorization has been requested or is expected.

* * * * *

PART 157 -- APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

4. The authority citation for part 157 continues to read as follows:

Authority: 15 U.S.C. 717-717w.

5. In §157.9:

a. The section heading is revised;

b. The existing text is designated as paragraph (a) and the word “business” is added immediately before the phrase “days of filing”; and

c. A new paragraph (b) is added, to read as follows:

§ 157.9 Notice of application and notice of schedule for environmental review.

* * * * *

(b) For each application that will require an environmental assessment or an environmental impact statement, notice of a schedule for the environmental review will be issued within 90 days of the notice of the application, and subsequently will be published in the Federal Register.

6. In § 157.14, paragraph (a)(12) is added to read as follows:

§ 157.14 Exhibits.

(a) * * *

(12) Exhibit J – Federal authorizations. A statement identifying each Federal authorization that the proposal will require; the Federal agency or officer, or State agency or officer acting pursuant to delegated Federal authority, that will issue each required authorization; the date each request for authorization was submitted; why any request was not submitted and the date submission is expected; and the date by which final action on each Federal authorization has been requested or is expected.

* * * * *

7. In subpart A, § 157.22 is added to read as follows:

§ 157.22 Schedule for final decisions on a request for a Federal authorization

For an application under section 3 or 7 of the Natural Gas Act that requires a Federal authorization – i.e., a permit, special use authorization, certification, opinion, or other approval – from a Federal agency or officer, or State agency or officer acting pursuant to delegated Federal authority, a final decision on a request for a Federal

authorization is due no later than 90 days after the Commission issues its final environmental document, unless a schedule is otherwise established by Federal law.

PART 375 – THE COMMISSION

8. The authority citation for part 375 continues to read as follows:

Authority: 5 U.S.C. 551-557; 15 U.S.C. 717-717w, 3301-3432; 16 U.S.C. 791-825r, 2601-2645; 42 U.S.C. 7101-7352.

9. In § 375.308, paragraph (bb) is added to read as follows:

§ 375.308 Delegations to the Director of the Office of Energy Projects.

* * * * *

(bb) Establish a schedule for each Federal agency or officer, or State agency or officer acting pursuant to delegated Federal authority, to issue or deny Federal authorizations required for natural gas projects subject to section 3 or 7 of the Natural Gas Act.

PART 385 – RULES OF PRACTICE AND PROCEDURE

10. The authority citation for part 385 continues to read as follows:

Authority: 5 U.S.C. 551-557; 15 U.S.C. 717-717z, 3301-3432; 16 U.S.C. 791a-825r, 2601-2645; 28 U.S.C. 2461; 31 U.S.C. 3701, 9701; 42 U.S.C. 7101-7352; 49 U.S.C. 60502; 49 App. U.S.C. 1-85 (1988).

11. Section 385.2013 is redesignated as § 385.2015 and the heading of newly designated §385.2015 is revised to read as follows:

§ 385.2015 Videotapes (Rule 2015).

12. New §§ 385.2013 and 385.2014 are added to read as follows:

§ 385.2013 Notification of requests for Federal authorizations and requests for further information (Rule 2013).

(a) For each Federal authorization – i.e., permit, special use authorization, certification, concurrence, opinion, or other approval – required under Federal law with respect to a natural gas project for which an application has been filed under section 3 of the Natural Gas Act for a certificate of public convenience and necessity under section 7 of the Natural Gas Act, each Federal agency or officer, or State agency or officer acting pursuant to delegated Federal authority, responsible for a Federal authorization must file with the Commission within 30 days of the date of receipt of a request for a Federal authorization, notice of the following:

(1) Whether the application is ready for processing, and if not, what additional information or materials will be necessary to assess the merits of the request;

(2) The time the agency or official will allot the applicant to provide the necessary additional information or materials;

(3) What, if any, studies will be necessary in order to evaluate the request;

(4) The anticipated effective date of the agency's or official's decision; and

(5) If applicable, the schedule set by Federal law for the agency or official to act.

(b) A Federal agency or officer, or State agency or officer acting pursuant to delegated Federal authority, considering a request for a Federal authorization that

submits a data request to an applicant must file a copy of the data request with the Commission within 10 business days.

§ 385.2014 Petitions for appeal or review of Federal authorizations (Rule 2014).

(a) For each Federal authorization – i.e., permit, special use authorization, certification, concurrence, opinion, or other approval – required under Federal law with respect to a natural gas project for which an application has been filed for authorization under section 3 of the Natural Gas Act for a certificate of public convenience and necessity under section 7 of the Natural Gas Act, the Federal agency or officer, or State agency or officer acting pursuant to delegated Federal authority, responsible for each Federal authorization must file with the Commission within 30 days of the effective date of a final decision or action on a request for a Federal authorization or the expiration of the time provided by the Commission or by Federal law for a final decision or action, the following:

- (1) A copy of any final decision or action;
- (2) An index identifying all documents and materials – including pleadings, comments, evidence, exhibits, testimony, project alternatives, studies, and maps – relied upon by the agency or official in reaching a decision or action; and
- (3) The designation “Consolidated Record” and the docket number for the Commission proceeding applicable to the requested Federal authorization.

(b) The agencies' and officers' decisions, actions, and indices, and the Commission's record in each proceeding, constitute the complete consolidated record. The original documents and materials that make up the complete consolidated record must be retained by agencies, officers, and the Commission for at least three years from the effective date of a decision or action or until an appeal or review is concluded.

(c) Upon appeal or review of a Federal authorization, agencies, officers, and the Commission will transmit to the reviewing authority, as requested, documents and materials that constitute the complete consolidated record.