

ORAL ARGUMENT HAS NOT BEEN SCHEDULED

**In the United States Court of Appeals
for the District of Columbia Circuit**

No. 14-1062

GUNPOWDER RIVERKEEPER,
Petitioner,

v.

FEDERAL ENERGY REGULATORY COMMISSION,
Respondent.

ON PETITION FOR REVIEW OF ORDERS OF THE
FEDERAL ENERGY REGULATORY COMMISSION

**BRIEF OF RESPONDENT
FEDERAL ENERGY REGULATORY COMMISSION**

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FINAL BRIEF: November 24, 2014

**CIRCUIT RULE 28(A)(1) CERTIFICATE
AS TO PARTIES, RULINGS, AND RELATED CASES**

A. Parties and Amici

All parties and intervenors appearing in this Court are identified in Petitioner's brief.

B. Rulings Under Review

1. *Columbia Gas Transmission, LLC*, 145 FERC ¶ 61,153 (2013) (Certificate Order), R.210, JA 49; and

2. *Columbia Gas Transmission, LLC*, 146 FERC ¶ 61,116 (2014) (Rehearing Order), R.233, JA 102.

C. Related Cases

This case has not previously been before this Court or any other court. Counsel is not aware of any related cases pending before this Court or elsewhere.

/s/ Elizabeth E. Rylander
Elizabeth E. Rylander

FINAL BRIEF: November 24, 2014

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GLOSSARY

Application	Application of Columbia Gas Transmission, LLC for a Certificate of Public Convenience and Necessity, Docket No. CP13-8-000 (Oct. 22, 2012), R.1, JA 136
Certificate Order	<i>Columbia Gas Transmission, LLC</i> , 145 FERC ¶ 61,153 (2013), R.210, JA 49
Columbia Gas	Intervenor Columbia Gas Transmission, LLC
Commission or FERC	Federal Energy Regulatory Commission
EA	Environmental Assessment
Maryland	State of Maryland or Maryland Department of the Environment
NEPA	National Environmental Policy Act, 42 U.S.C. § 4321 <i>et seq.</i>
Pipeline Extension	21.1-mile extension of Columbia Gas’s Line MB from its terminus near Owings Mills, Maryland, to loop Line MA between Owings Mills, Maryland and Rutledge, Maryland
Rehearing Order	<i>Columbia Gas Transmission, LLC</i> , 146 FERC ¶ 61,116 (2014) (Rehearing Order), R.233, JA 102

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**BRIEF OF RESPONDENT
FEDERAL ENERGY REGULATORY COMMISSION**

STATEMENT OF THE ISSUES

The Federal Energy Regulatory Commission (Commission or FERC) approved the application of Intervenor Columbia Gas, LLC (Columbia Gas) to construct and operate a 21.1-mile segment of natural gas pipeline, after considering the environmental impacts of the pipeline and, ultimately, weighing the public benefits of constructing the pipeline against the public costs of doing so. The issues presented for review are:

1. Does Petitioner Gunpowder Riverkeeper have standing to challenge the Commission orders presented for review, when it has not demonstrated that its members' alleged economic harms fall within the zone of interests of the environmental statutes on which it relies?

2. Assuming jurisdiction, did the Commission reasonably interpret section 7 of the Natural Gas Act, 15 U.S.C. § 717f, to grant Columbia Gas a certificate of public convenience and necessity subject to Columbia Gas's later receipt of a Clean Water Act certification from the State of Maryland?

3. Assuming jurisdiction, did the Commission's analysis of the subject natural gas pipeline project – in particular, the effect on surface waters – satisfy the requirements of the National Environmental Policy Act (NEPA), and adequately support approval of the project under the Natural Gas Act?

STATUTES AND REGULATIONS

The pertinent statutes and regulations are reproduced in the Addendum.

COUNTER-STATEMENT REGARDING JURISDICTION

This Court lacks jurisdiction to review the challenged orders under 15 U.S.C. § 717r(b) because Gunpowder Riverkeeper has not shown that its members' alleged economic interests fall within the zone of interests of the environmental statutes on which it relies, and therefore has not demonstrated that it has standing to challenge the orders' conclusions.

A party is aggrieved within the meaning of the Natural Gas Act if it can show that it meets the constitutional and prudential requirements for standing. *E.g., PNGTS Shippers' Group v. FERC*, 592 F.3d 132, 136-37 (D.C. Cir. 2010); *Dominion Transmission, Inc. v. FERC*, 533 F.3d 845, 851-52 (D.C. Cir. 2008). Gunpowder Riverkeeper alleges, with the support of affidavits from its members, that property easements and the threat of eminent domain proceedings in connection with construction of the Columbia Gas pipeline project have impacted the property interests of one or more of its members. Br. 15. *See, e.g., NO Gas Pipeline v. FERC*, 756 F.3d 764, 767 (D.C. Cir. 2014) (standing affidavits must demonstrate immediate, non-speculative injury to association members). But it has not shown that there is any causal connection between the asserted property and economic interests of its members and the environmental values of the statutes it cites. Consequently, Gunpowder Riverkeeper lacks standing to pursue this appeal. Economic interests fall outside the zone of interests of environmental statutes when they are not linked to the protective aims of those statutes. *Ashley Creek Phosphate Co. v. Norton*, 420 F.3d 934, 940 (D.C. Cir. 2005).

INTRODUCTION

This case concerns certain aspects of FERC's process for evaluating the environmental impact of natural gas pipeline construction projects submitted for its approval under section 7(c) of the Natural Gas Act, 15 U.S.C. § 717f(c).

Columbia Gas filed an application under section 7(c) to build and operate a 21.1-mile segment of natural gas pipeline in Baltimore and Harford Counties, Maryland (Pipeline Extension) with the goal of improving service reliability for its customers within and northeast of Baltimore, Maryland. The Commission reviewed the project pursuant to the requirements of the National Environmental Policy Act, 42 U.S.C. § 4321, *et seq.*, and in so doing consulted with other jurisdictional agencies, gathered and considered evidence, and responded to public comments concerning the impact of the project on the environment.

The Commission ultimately found that the Pipeline Extension was required by the public convenience and necessity under the Natural Gas Act, and that it would have no significant environmental impact as defined in NEPA, and approved it in the orders challenged here. *Columbia Gas Transmission, LLC*, 145 FERC ¶ 61,153 (2013) (Certificate Order), JA 49; *reh'g denied*, 146 FERC ¶ 61,116 (2014) (Rehearing Order), JA 102. The orders prohibited Columbia Gas from beginning construction on the project before it satisfied numerous environmental conditions, one of which was that it obtain a Clean Water Act certificate from the Maryland Department of the Environment (Maryland) that addressed project impacts on certain bodies of water within the state.

STATEMENT OF FACTS

I. Statutory And Regulatory Background

A. Natural Gas Act

The principal purpose of the Natural Gas Act is “to encourage the orderly development of plentiful supplies of . . . natural gas at reasonable prices.” *Pub. Utils. Comm’n of Cal. v. FERC*, 900 F.2d 269, 281 (D.C. Cir. 1990) (quoting *NAACP v. FPC*, 425 U.S. 662, 670 (1976)). To that end, Natural Gas Act section 1(b) grants the Commission jurisdiction over the transportation and wholesale sale of natural gas in interstate commerce. 15 U.S.C. § 717(b). Natural Gas Act section 7(c) requires any person seeking to construct or operate a facility for the transportation of natural gas in interstate commerce to obtain a certificate of public convenience and necessity from the Commission. *Id.* § 717f(c)(1)(A). Under Natural Gas Act section 7(e), the Commission shall issue a certificate to any qualified applicant upon finding that the proposed construction and operation of the pipeline facility “is or will be required by the present or future public convenience and necessity,” subject to “such reasonable terms and conditions as the public convenience and necessity may require.” *Id.* § 717f(e). Applicants seeking a certificate from FERC must comply with extensive application requirements, including public notice and opportunity to protest the filing, and

environmental review proceedings and findings. *See generally* 18 C.F.R. §§ 157.1-157.22.

B. Clean Water Act

Section 401(a)(1) of the Clean Water Act, 33 U.S.C. § 1341(a)(1), requires that any applicant for a federal license or permit for an activity that may result in any discharge into the nation's waters must provide the licensing or permitting agency with a water quality certification from the state in which the discharge will originate – i.e., a certification that the discharge will comply with other applicable provisions of the Clean Water Act, including a section that requires each state to adopt its own state water quality standards. *See S.D. Warren Co. v. Me. Bd. of Env'tl. Prot.*, 547 U.S. 370, 374 & n.1 (2006); *Pub. Util. Dist. No. 1 of Jefferson Cnty. v. Wash. Dep't of Ecology*, 511 U.S. 700, 703 (1994). The “requirement for a state certification applies not only to applications for licenses from FERC, but to all federal licenses and permits for activities which may result in a discharge into the Nation's navigable waters.” *Pub. Util. Dist. No. 1 of Jefferson Cnty.*, 511 U.S. at 723. In this case, the Maryland Department of the Environment (Maryland) is the agency responsible for evaluating applications for water quality certifications under section 401(a)(1) of the Clean Water Act. Certificate Order at P 72, JA 70; Environmental Assessment (EA) at 4, Docket No. CP13-8-000 (Apr. 19, 2013), R.118, JA 198.

The Commission requires applicants for a certificate of public convenience and necessity under section 7 of the Natural Gas Act to identify in their project application each federal authorization that the proposal will require, the federal agency or officer (or the state agency or officer acting under delegated federal authority) that will issue the authorization, and the date the authorization was requested or is expected. 18 C.F.R. § 157.14(a)(12).

C. National Environmental Policy Act

The Commission's consideration of an application for a certificate of public convenience and necessity triggers environmental review. *See* 42 U.S.C.

§ 4332(2)(C). NEPA sets out procedures for federal agencies to follow, to ensure that the environmental effects of proposed actions are “adequately identified and evaluated.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989); *see also Dep't of Transp. v. Public Citizen*, 541 U.S. 752, 768 (2004).

“NEPA imposes only procedural requirements on federal agencies with a particular focus on requiring agencies to undertake analyses of the environmental impact of their proposals and actions.” *Public Citizen*, 541 U.S. at 756-57 (quoting *Robertson*, 490 U.S. at 349-50); *see also Theodore Roosevelt Conservation P'ship v. Salazar*, 616 F.3d 497, 503 (D.C. Cir. 2010) (NEPA ensures a “fully informed and well-considered decision, not necessarily the best decision”). Accordingly, an agency must “take a ‘hard look’ at the environmental consequences before taking a

major action.” *Balt. Gas & Elec. Co. v. Natural Res. Def. Council, Inc.*, 462 U.S. 87, 97 (1983) (citation omitted).

Regulations implementing NEPA require agencies to consider the environmental effects of a proposed action by preparing either an environmental assessment, if supported by a finding of no significant impact, or a more comprehensive environmental impact statement. *See* 40 C.F.R. § 1501.4 (detailing when to prepare an environmental impact statement versus an environmental assessment); *see also Mich. Gambling Opposition v. Kempthorne*, 525 F.3d 23, 28 (D.C. Cir. 2008) (summarizing regulations governing agency’s determination whether an environmental impact statement is needed). Once the agency issues a finding of no significant impact, it has fulfilled NEPA’s documentation requirements. *See Taxpayers of Mich. Against Casinos v. Norton*, 433 F.3d 852, 857 (D.C. Cir. 2006) (citing 40 C.F.R. §§ 1501.4(e), 1508.9, 1508.13).

II. Factual Background

A. The Pipeline Extension

Columbia Gas operates 12,000 miles of interstate natural gas pipeline facilities that deliver natural gas to transportation customers, including local distribution companies that redeliver gas to residential, commercial, and industrial customers in the Midwest, Mid-Atlantic, and Northeast regions of the country. Application of Columbia Gas Transmission, LLC for a Certificate of Public

Convenience and Necessity at 4-5, Docket No. CP13-8-000 (Oct. 22, 2012) (Application), R.1, JA 140-41. Columbia Gas and its predecessors have operated natural gas pipelines in Maryland since before 1940. *Id.* at 8, JA 144.

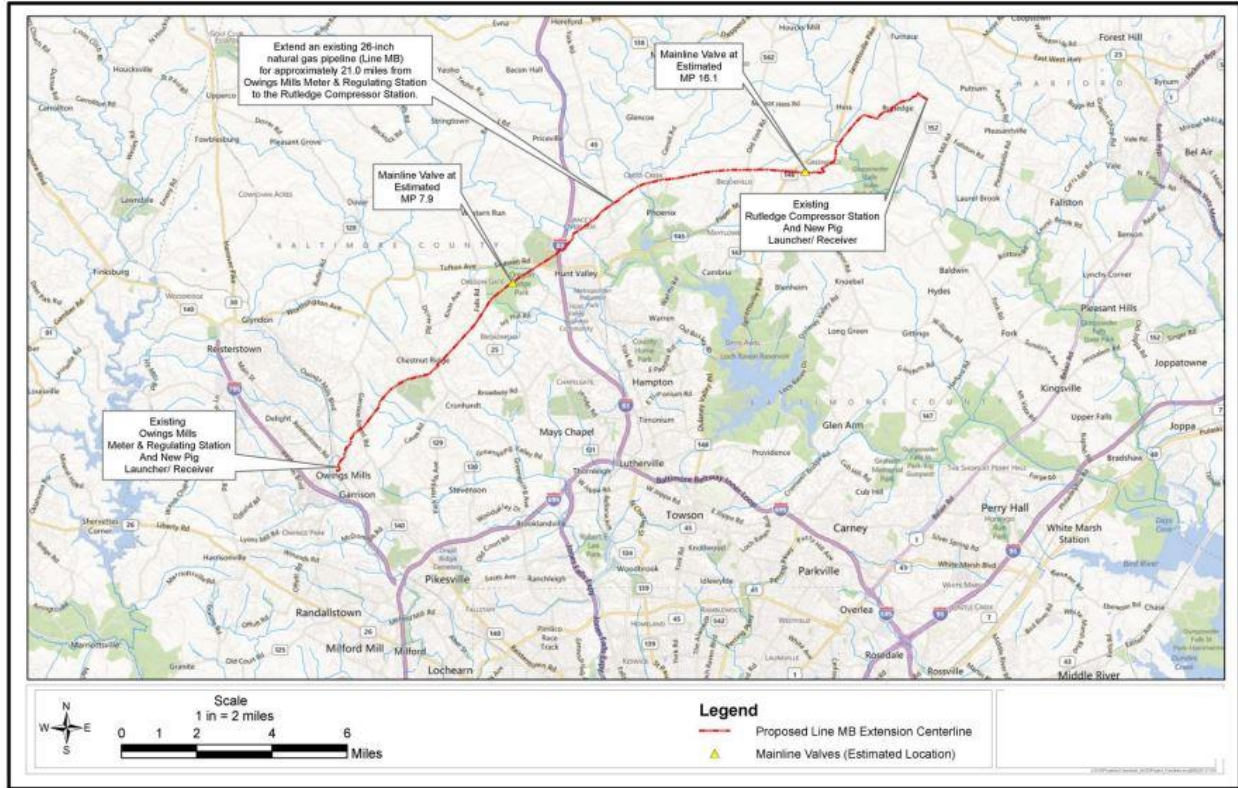
Columbia Gas has undertaken a system-wide, five-year modernization program designed to improve its aging infrastructure, of which 70 percent was built before federal pipeline safety standards were enacted in 1970.¹ Certificate Order at P 5 & n.2, JA 50. The modernization program is aligned with the Department of Transportation's pipeline safety initiative, which urges pipeline operators to reinvest in their infrastructure to ensure continued pipeline safety and reliability. Certificate Order at P 21, JA 54; Application at 5, JA 141. New Pipeline and Hazardous Materials Safety Administration rules will require more frequent inspection and maintenance of pipelines, which increases the likelihood of service outages on any given single-line pipeline segment. Certificate Order at P 21, JA 54; Application at 6, JA 142.

The segment of Columbia Gas's Line MA that runs from Owings Mills, Maryland to Rutledge, Maryland is among Columbia Gas's highest priorities for modernization. Line MA provides natural gas service to the Baltimore, Maryland metropolitan market (via a direct connection to Baltimore Gas & Electric) and to

¹ Columbia Gas replaced 24.6 miles of Line MA pursuant to Commission authorization granted in 1981. *Columbia Gas Transmission Corp.*, 15 FERC ¶ 61,258 (1981).

other significant markets further north and east. Certificate Order at P 5, JA 50. It provides single-line service, which means that there is no redundancy in this segment of Columbia Gas's system. Application at 6, JA 142. No other pipelines directly connected to Baltimore Gas & Electric have enough capacity available during high flow periods to provide adequate emergency replacement gas deliveries if Line MA becomes unavailable. *See* Certificate Order at P 5, JA 50; Application at 6, JA 142. Consequently, if Line MA must be taken out of service for repairs or inspections, customers may be subject to lengthy outages. *See* Certificate Order at PP 5, 20, JA 50, 54; Application at 6, JA 142.

To address this reliability problem, Columbia Gas proposed to build the Line MB Extension (subsequently referred to herein as the Pipeline Extension). The Pipeline Extension would extend Columbia's existing Line MB 21.1 miles from its terminus near Owings Mills, Maryland, to loop Line MA between Owings Mills and Rutledge. Certificate Order at P 1, JA 49; Application at 8-9, JA 144-45. (Columbia Gas also proposed to build related facilities that are not at issue here. *See* Application at 9, JA 145.) The Pipeline Extension route is shown in the following diagram:



Environmental Assessment at 2, JA 196.

Much of the Pipeline Extension would be located on or adjacent to existing pipeline rights-of-way. Certificate Order at P 14, JA 53; EA at 9, JA 203 (new pipeline would parallel the existing right-of-way for 16.5 of its 21.1 miles – 78 percent of its proposed route). Columbia Gas stated that the Pipeline Extension was not intended to add capacity that the utility would sell, but rather to increase system reliability and operational flexibility. Certificate Order at P 16, JA 53; Application at 11-13, JA 147-49 (describing system benefits from the expansion that include lower risks of service outages; lower horsepower at the Rutledge compressor station; a reduction in electricity consumption and associated costs in a

Columbia Gas rate surcharge; and additional flexibility to serve natural-gas-powered electric generating facilities).

B. The Commission's Environmental Review

The Commission's environmental review of the Pipeline Extension began during the pre-filing process for the project application. The Commission issued a notice of intent to prepare an Environmental Assessment for the project, announcing dates for public meetings about the project and requesting comments on environmental issues of concern to the public. Certificate Order at P 28, JA 56; Notice of Intent to Prepare an Environmental Assessment, Docket No. PF12-6-000 (Apr. 16, 2012), JA 124. This process, called scoping, was designed to focus the Commission's analysis in the Environmental Assessment. Notice of Intent at 3, JA 126. The Commission issued a second, supplemental notice after Columbia Gas amended the pipeline route as part of the pre-filing process. Certificate Order at P 29, JA 57. The Commission received numerous comments responding to its two notices, and it took those comments into account in the process of preparing the Environmental Assessment. *Id.* P 31, JA 57.

After Columbia Gas submitted its formal project application on October 22, 2012, the Commission issued public notice of Columbia Gas's application to construct the Pipeline Extension. Notice of Application, Docket No. CP13-8-000 (Nov. 1, 2012), R.15, JA 170. The Commission stated that, within 90 days, it

would either complete an Environmental Assessment and place it into the record of the proceeding, or issue a Notice of Schedule for Environmental Review. *Id.* at 2, JA 171. The Commission's schedule was important because, among other reasons, some agencies had indicated that they would not begin processing Columbia Gas's permit or clearance requests until after the Commission issued its Environmental Assessment. Application at 2 n.2, JA 138. *See also* EA at 3-5, JA 197-99 (Table A.4-1) (listing status of the federal, state, and local environmental permits, approvals, and consultations necessary for Columbia Gas to carry out the Pipeline Extension). The Commission eventually issued a Notice of Schedule for Environmental Review, which set deadlines of April 19, 2013 for issuance of the final Environmental Assessment for the project, and July 18, 2013 for federal authorizations. Notice of Schedule for Environmental Review of the Line MB Loop Extension Project at 1, Docket No. CP13-8-000 (Mar. 21, 2013), R.106, JA 179.

After considering all of the comments that it received during the environmental review, Commission staff issued an extensive Environmental Assessment. Certificate Order at P 31-32, JA 57-58. As relevant here, the Environmental Assessment discussed the impacts of the Pipeline Extension on surface waters, accounting for input and recommendations that Columbia Gas and the Commission received during the process of environmental review. EA at 35-

41, JA 229-35. The Environmental Assessment concluded that if Columbia Gas followed certain mitigation measures, the Pipeline Extension would not significantly impact surface waters. *Id.* at 41, JA 235. The Environmental Assessment also recited the pending state and federal approvals, permits, and consultations necessary for Columbia Gas to build and operate the Pipeline Extension, and the dates that those approvals, permits, and consultations had been received or were expected. *Id.* at 3-5, JA 197-99 (Table A.4-1). The Clean Water Act water quality certification was expected from Maryland in July 2013. *Id.* at 4, JA 198.

The Environmental Assessment concluded that there would be no significant impact to the human environment from the construction and operation of the Pipeline Extension, but recommended that the Commission's approval of the project include various mitigation measures as conditions. *Id.* at 136, JA 330. Among those environmental conditions was a requirement that, prior to receiving written authorization to begin construction, Columbia Gas should file with the Commission documentation that it has received all applicable authorizations required under federal law. *Id.* at 139, JA 333.

The Commission issued a public notice that the Environmental Assessment was available for review, and established a 35-day period for public comment. Notice of Availability of the Environmental Assessment for the Proposed Line MB

Extension Project at 1-2, Docket No. CP13-8-000, R.117, JA 508-09. In response to this notice, the Commission received comments from various state and federal agencies, from organizations including Gunpowder Riverkeeper, and from affected landowners and members of homeowner associations. Certificate Order at P 32, JA 57-58.

C. The Challenged Orders

1. Certificate Order

On November 21, 2013, the Commission issued an order authorizing Columbia Gas to construct and operate the Pipeline Extension, subject to 18 environmental conditions. Certificate Order P 1, Ordering PP (A)-(B) & App. B (listing conditions), JA 92-93 & 95-101. The Certificate Order explains that the Commission must undertake a step-by-step analysis to balance the public benefits of a proposed project against the potential adverse consequences of the project, which include unnecessary disruptions to the environment and unneeded exercise of eminent domain. *Id.* PP 10-11, JA 51-52 (citing *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000)). The Commission found that Columbia Gas had substantiated the need for the project. *Id.* P 22, JA 54-55. It also found that the Pipeline Extension would better enable Columbia Gas to meet its customers' peak demands, and that a second line on this portion of its pipeline

system would enable uninterrupted service during repairs. *Id.* PP 13, 20, JA 52-53, 54.

The Commission then conducted a thorough environmental review of the Pipeline Extension, taking into account the Environmental Assessment and all substantive comments on it. *Id.* PP 28-152, JA 56-92. The Commission affirmed the finding in the Environmental Assessment that if the project was built and operated in accordance with Columbia Gas's application and certain conditions, approving it "would not constitute a major federal action significantly affecting the quality of the human environment." *Id.* P 150, JA 92.

Gunpowder Riverkeeper argued that, because the deadlines for many of the permits, approvals, consultations, and variances that Columbia Gas needs for its project occur after the public notice and comment period for the Environmental Assessment, the public cannot comment on issues and impacts that are unknown. *Id.* P 44, JA 62. The Commission responded that it allows the Environmental Assessment to issue prior to the receipt of all state and federal authorizations, because an applicant might not be able to obtain all necessary approvals before the Commission issues an Environmental Assessment or a final certificate without unduly delaying a project. *Id.* P 45, JA 62. The Commission noted that the certificate authorizations granted in the order are subject to Columbia Gas's compliance with the environmental conditions in Appendix B of the order. *Id.*

Those conditions include filing with the Secretary of the Commission documentation that Columbia Gas has received all applicable authorizations required under federal law prior to beginning construction of the project. *Id.* at App. B, P 8, JA 98.

2. Rehearing Order

On April 18, 2014, the Commission issued an order denying rehearing of the Certificate Order. Rehearing Order at P 1, JA 102. As relevant here, the Commission continued to disagree with Gunpowder Riverkeeper's contention that, because certain permits, approvals, consultations and variances that Columbia Gas needs to complete the Pipeline Extension were outstanding, the public was excluded from meaningful participation. *Id.* P 20, JA 109. The Commission again explained that its long-standing practice was that an Environmental Assessment may be issued before all state and federal authorizations become final, because an applicant might not be able to obtain all necessary approvals before the Commission issues an Environmental Assessment or a certificate without unduly delaying the project. *Id.* P 21, JA 109 (citing Certificate Order at PP 44-46, JA 62). The Commission explained that it takes this approach in order to make timely decisions "in a way that will inform applicants, sponsors, other regulatory agencies, and the public." *Id.* The Commission also reiterated that project construction could not begin until Columbia Gas receives and files with the

Commission all other necessary federal authorizations, including the Clean Water Act certification from Maryland, and obtains a Notice to Proceed with Construction. *Id.* PP 21, 39, JA 109, 116.

D. Subsequent Events

Maryland issued the required Clean Water Act water quality certification for the Pipeline Extension on April 21, 2014, and Columbia Gas filed a copy of the certification with the Commission. Nontidal Wetlands and Waterways Permit, 401 Water Quality Certification, and CZMA Federal Consistency Submitted by Columbia Pipeline Group, Docket No. CP13-8-000 (Apr. 29, 2014), JA 588. The Commission authorized Columbia Gas to commence construction of portions of the Pipeline Extension on May 22, 2014. *See* Letter from Alisa M. Lykens, FERC, to Frederic R. George, NiSource, Docket No. CP13-8-000 (May 22, 2014) (finding compliance with Environmental Condition 8 and noting receipt of all necessary state and federal authorizations), JA 1203.

SUMMARY OF ARGUMENT

Evaluating an application for FERC authorization to construct and operate a natural gas pipeline under section 7 of the Natural Gas Act, 15 U.S.C. § 717f, is a complex, multi-faceted undertaking. In order to carry out its review of a proposed project, which ultimately requires it to weigh the public benefits of that project against its public costs, the Commission must develop and analyze an extensive

environmental record. This requires the Commission to comply with the requirements of multiple statutes, and to ensure that it and the applicant have properly coordinated with other federal and state agencies that have jurisdiction over some aspect of the proposed natural gas infrastructure project.

Gunpowder Riverkeeper challenges two aspects of the Commission's review, both of which concern the relationship between the Commission's review and that of another jurisdictional agency. It contends that, as a matter of timing, the Commission violated section 401(a)(1) of the Clean Water Act, 33 U.S.C. § 1341(a)(1), because it approved the Pipeline Extension under the Natural Gas Act before the project received a Clean Water Act water quality certification from Maryland. It also contends, as a matter of substance, that the Commission failed to fulfill its obligations under the National Environmental Policy Act, 42 U.S.C. § 4321, *et seq.*, because it improperly relied on the not-yet-issued Clean Water Act water quality certification to find that there were no environmental concerns with the Pipeline Extension's impact on certain surface waters.

The Court should dismiss Gunpowder Riverkeeper's petition for review for lack of standing, because it has not demonstrated that it has statutory standing (which requires a showing of injury within the zone of interests protected by the statute) under the Clean Water Act or the National Environmental Policy Act. Gunpowder Riverkeeper fails to establish a causal nexus between the economic

harm to private property interests that it claims and the environmental statutes it cites. As for constitutional standing, Gunpowder Riverkeeper claims injury to the property interests of its members, but whether its presentation is sufficient is a close call.

If the Court does not dismiss Gunpowder Riverkeeper's claims and proceeds to the merits, then it should uphold the Commission's orders on the ground that the Commission reasonably construed the Natural Gas Act to authorize conditional approval of the Pipeline Extension, subject to the state approval required under the Clean Water Act. Section 7 of the Natural Gas Act vests the Commission with broad power to attach to any certificate of public convenience and necessity it issues "such reasonable terms and conditions" as it deems appropriate. 15 U.S.C. § 717f(e). Conditional approval does not foreclose or forestall Maryland's inquiry under the Clean Water Act, and the Commission did not authorize Columbia Gas to disturb the environment – i.e., to begin construction of the project – before Maryland had acted.

Moreover, the record demonstrates that the Commission took a "hard look" at the environmental implications of the project under NEPA, including its effects on surface waters. The Commission did not improperly delegate its authority to Maryland to conduct this analysis. To the contrary, the Environmental Assessment and the Commission's orders correctly acknowledge the integration of Maryland's

authority to disapprove or to condition the project under the Clean Water Act with the Commission's own responsibilities under the Natural Gas Act and NEPA. The Commission thus properly reflected Maryland's role in its Environmental Assessment and its orders.

ARGUMENT

I. Gunpowder Riverkeeper Lacks Standing to Bring This Appeal

Any party to a Natural Gas Act proceeding that is aggrieved by an order of the Commission may obtain review of the order before the Court of Appeals. 15 U.S.C. § 717r(b). “The requirement of aggrievement serves to distinguish a person with a direct stake in the outcome from a person with a mere interest in the problem.” *City of Orrville, Ohio v. FERC*, 147 F.3d 979, 985 (D.C. Cir. 1998) (citing *North Carolina Utils. Comm'n v. FERC*, 653 F.2d 655, 662 (D.C. Cir. 1981)). To demonstrate aggrievement, a party must show that it meets the elements of constitutional standing: an injury in fact that is concrete, particularized, and actual or imminent; fairly traceable to the agency's challenged action; and redressable by a favorable ruling. *See Clapper v. Amnesty Int'l USA*, 133 S.Ct. 1138, 1147 (2013); *NO Gas Pipeline*, 756 F.3d at 767. A party must also establish statutory standing (sometimes called “prudential standing”), i.e., that “a legislatively conferred cause of action encompasses a particular plaintiff's claim.” *Lexmark Int'l, Inc. v. Static Control Components*, 134 S.Ct. 1377, 1386-87 (2014);

see also Bennett v. Spear, 520 U.S. 154, 163 (1997); *Grand Council of the Crees (of Quebec) v. FERC*, 198 F.3d 950, 954 (D.C. Cir. 2000). The Court may analyze standing questions in whatever order it prefers. *Grand Council of the Crees*, 198 F.3d at 954.

A. Constitutional Standing Is a Close Call

The body of Gunpowder Riverkeeper’s brief, limited to economic (private property) harm, fails to establish constitutional standing. Its supporting affidavits, claiming additional harms, come much closer.

Gunpowder Riverkeeper is an “organization engaged in natural resource protection and conservation focused on the Gunpowder River watershed,” where its 175 members live, work, and recreate. Br. 17. & Decl. of Theaux M. Le Gardeur at 1. Not every member of Gunpowder Riverkeeper needs standing to pursue this appeal, but one or more of its members must demonstrate they are “among the injured.” *Sierra Club v. Morton*, 405 U.S. 727, 735, 740-41 (1972); *accord Lujan v. Defenders of Wildlife*, 504 U.S. 555, 563 (1992). Gunpowder Riverkeeper submitted four affidavits from its members that describe their connection to this case.

Gunpowder Riverkeeper explains that, under the Natural Gas Act, a certificate holder may interfere with private property interests by using eminent domain to acquire property in connection with a project. Br. 14-15 (citing 15

U.S.C. § 717f(d)). It says that “Columbia’s easements and the threats of eminent domain proceedings” have adversely affected its members’ property interests, and states that Columbia Gas has obtained a judgment in eminent domain proceedings in the United States District Court for the District of Maryland against certain property owners pursuant to the certificate for the Pipeline Extension. Br. 15 (citing Order and Memorandum Opinion, *Columbia Gas Transmission LLC v. 76 Acres, More or Less, in Baltimore and Harford Cntys., Maryland*, No. 1:14-cv-00110 (D. Md. June 27, 2014)). But Gunpowder Riverkeeper does not allege that any of its members had judgment entered against their property in the *76 Acres* litigation and, indeed, none did.² Gunpowder Riverkeeper makes no further allegations concerning adverse effects of property easements related to the Pipeline Expansion.³ Its brief therefore does not show that its members have suffered injury from actual or threatened eminent domain actions.

² Standing declarants Susan M. and Frank A. Tedeschi were initially named as defendants in *76 Acres*, but the district court approved Columbia Gas’s voluntary dismissal of its claim against them before Gunpowder Riverkeeper filed its opening brief. Notice of Voluntary Dismissal of Defendants Frank A. and Susan M. Tedeschi, No. 1:14-cv-00110 (D. Md. April 29, 2014).

³ *B&J Oil and Gas v. FERC*, 353 F.3d 71 (D.C. Cir. 2004), which Gunpowder Riverkeeper relies on to support its claim of injury, offers little help. *B&J* concerned the elimination of one party’s property interest in oil and gas wells when another party’s underground natural gas migrated onto its property. This is far from the sort of encroachment at issue here. In this case, the parties have had an opportunity to plan and negotiate the construction of the pipeline on private

The standing affidavits themselves come closer to establishing standing. For example, Michael and Sally Ann Mickel report “aesthetic, physical, and emotional loss” of trees. Mickel aff. at 2. Sarah S. Merryman expects that she will be unable to drive heavy equipment over the pipeline easement on her farm. Merryman aff. at 4. And standing declarants Susan M. and Frank A. Tedeschi subsequently had partial summary judgment entered against their property in a condemnation case that Columbia Gas filed six days before they executed their standing declaration, and thirteen days before Gunpowder Riverkeeper filed its opening brief. *See Order, Columbia Gas Transmission, LLC v. 0.85 Acres, More or Less, in Harford Cnty, Md.*, No. 1:14-cv-02288 (D. Md. Sept. 8, 2014).

On balance, the allegations in the brief seem to express “concerns over injuries that have neither occurred nor become imminent.” *NO Gas Pipeline*, 756 F.3d at 768. But the subsequent events and the standing affidavits suggest that the Gunpowder Riverkeeper members’ interests more closely resemble those of the standing declarants in *Delaware Riverkeeper Network v. FERC*, 753 F.3d 1304 (D.C. Cir. 2014). There the standing declarants averred – and FERC did not challenge – that their ongoing use and enjoyment of private property and public recreation areas would be negatively affected by pipeline construction. *See*

land, and it does not appear that the process will extinguish landowners’ property interest. *See B&J*, 353 F.3d at 216-18.

Declarations in Support of Opening Br. of Petitioners, *Delaware Riverkeeper Network v. FERC*, D.C. Cir. No. 13-1015 (filed Apr. 26, 2013).

B. The Alleged Injuries Are Outside the Zone of Interests Protected By the Clean Water Act and the National Environmental Policy Act

Statutory (prudential) standing is even less established than constitutional standing. Gunpowder Riverkeeper asserts that the Commission violated the Clean Water Act because it conditionally authorized construction of the Pipeline Extension prior to Maryland's grant of a Clean Water Act water quality certification. Br. 20-23. It claims that the conditional authorization to construct the Pipeline Extension allowed Columbia Gas to exercise its eminent domain rights under section 7(h) of the Natural Gas Act, 15 U.S.C. § 717f(h), without a proper legal basis. *Id.* at 22-23. Gunpowder Riverkeeper also contends that the Commission did not take a "hard look" at the Pipeline Extension under the National Environmental Policy Act because the Commission relied on the not-yet-issued Clean Water Act water quality certification to do so.

"Prudential standing requires 'that a plaintiff's grievance must arguably fall within the zone of interests protected or regulated by the statutory provision.'" *Nat'l Ass'n of Homebuilders v. Army Corps of Engineers*, 417 F.3d 1272, 1287 (D.C. Cir. 2005) (quoting *Bennett*, 520 U.S. at 162, and *Nuclear Energy Inst. v. EPA*, 373 F.3d 1251, 1266 (D.C. Cir. 2004)). This test is "not meant to be

especially demanding,” but it denies the right of review to a petitioner who is not the subject of the regulatory action, and whose interests are so tenuously related to the purpose of the statute that Congress cannot be assumed to have meant to permit the appeal. *Ashley Creek*, 420 F.3d at 940 (quoting *Clarke v. Sec. Indus. Ass’n*, 479 U.S. 388, 399 (1987)); accord *Lexmark*, 134 S.Ct. at 1389.

Gunpowder Riverkeeper does not allege that the Commission’s actions will diminish water quality, which is the environmental interest protected by the Clean Water Act. See 33 U.S.C. § 1251(a) (the “objective of this chapter is to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters”); *Homebuilders*, 417 F.3d at 1275 (same). Gunpowder Riverkeeper also does not allege environmental harm that flows from FERC’s alleged failure to follow NEPA procedures or claim that any of its members will suffer any loss or diminution of environmental enjoyment from pipeline construction or operation. The potential injury alleged here – the threat of a taking under eminent domain authority – is mostly (if not purely) economic. This Court has held that economic interests fall outside the zone of interests of environmental statutes when they are not linked to the protective aims of those statutes. *Ashley Creek*, 420 F.3d at 939-45. See also *ANR Pipeline Co. v. FERC*, 205 F.3d 403, 408 (D.C. Cir. 2000) (economic interests are “not within the zone of interests protected by NEPA.”). Eminent domain authority arises under the Natural Gas Act, and the Commission addressed

many Natural Gas Act issues, economic and otherwise, in its orders. *See, e.g.*, Certificate Order at PP 10-22 (project will increase system reliability and flexibility), 23-25 (addressing rate treatment of facility costs), JA 51-55, 55-56. But Gunpowder Riverkeeper challenges none of them, and chooses instead to limit its objections to issues under environmental statutes, without drawing a connection to the injuries raised in support of its claim of standing.

With regard to the district court's reliance on the challenged orders to support the use of eminent domain proceedings, there is no issue here for the Court to review. The district court's order is appended to Gunpowder Riverkeeper's brief to support its claim of standing, but Gunpowder Riverkeeper does not challenge it directly. It can only do so by way of a separate appeal of the district court's decision – something that Gunpowder Riverkeeper has chosen not, or is unable, to do.

Accordingly, Gunpowder Riverkeeper has not demonstrated that it has prudential standing to challenge the Commission's actions under the Clean Water Act or the National Environmental Policy Act.

II. The Commission's Conditional Approval of the Pipeline Extension Properly Reflected Consideration of All Applicable Law

A. Standard of Review

The Court reviews Commission orders under the Administrative Procedure Act's "arbitrary and capricious" standard. 5 U.S.C. § 706(2)(A); *see also, e.g.*,

Sithe/Independence Power Partners, L.P. v. FERC, 165 F.3d 944, 948 (D.C. Cir. 1999). The relevant inquiry for a reviewing court under this standard is whether the agency “examine[d] the relevant data and articulate[d] a satisfactory explanation for its action, including a ‘rational connection between the facts found and the choice made.’” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 158 (1962)). This Court will uphold the Commission’s factual findings if they are supported by substantial evidence. *Freeport-McMoRan Corp. v. FERC*, 669 F.3d 302, 308 (D.C. Cir. 2012). Substantial evidence “requires more than a scintilla, but can be satisfied by something less than a preponderance of the evidence.” *La. Pub. Serv. Comm’n v. FERC*, 522 F.3d 378, 395 (D.C. Cir. 2008) (internal quotation marks and citation omitted).

Where a court is called upon to review an agency’s construction of a statute it administers, well-settled principles apply. If Congress has directly spoken to the precise question at issue, “that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.” *Chevron U.S.A., Inc. v. Natural Res. Def. Council*, 467 U.S. 837, 842-43 (1984). If the statute is silent or ambiguous on the question at issue, then the court must decide whether the agency’s decision is based on a permissible construction of the

statute, and if it is, defer to the agency's construction. *City of Arlington, Tex. v. FCC*, 133 S.Ct. 1863, 1868 (2013). *See also, e.g., Williams Gas Processing-Gulf Coast Co., L.P. v. FERC*, 331 F.3d 1011, 1016 (D.C. Cir. 2003) (applying *Chevron* deference test to the Commission's interpretation of the Natural Gas Act).

B. The Commission Reasonably Interpreted the Natural Gas Act to Allow Conditional Approval of the Project

The Commission, as the guardian of the public interest, enjoys a wide range of discretionary authority to determine whether certificates should be granted. *FPC v. Transcon. Gas Pipeline Corp.*, 365 U.S. 1, 7 (1961). It also enjoys discretion to condition certificates of public convenience and necessity as the public interest may require. 15 U.S.C. § 717f(e); *Minisink Residents for Envtl. Preservation and Safety v. FERC*, 762 F.3d 97, 101 (D.C. Cir. 2014). *See also Transcon. Gas Pipe Line Corp. v. FERC*, 589 F.2d 186, 190 (5th Cir. 1979) (noting the Commission's "extremely broad" conditioning authority). The issue before the Court is a narrow one: whether the Commission properly found that it may exercise its conditioning authority to approve the Pipeline Extension subject to Columbia Gas's later receipt of a Clean Water Act water quality certification from Maryland.

1. The Commission’s Exercise of Conditioning Authority Reflects the Complexity of Approving Energy Projects

As the Commission explained in the orders on review, its “long-standing practice” is to complete its environmental review of project proposals “before all state and federal authorizations become final.” Certificate Order at P 45, JA 62; Rehearing Order at P 21, JA 109. Large energy projects “take considerable time and effort to develop,” and are “subject to many significant variables whose outcome cannot be predetermined.” *Crown Landing, LLC*, 117 FERC ¶ 61,209, at P 28 (2006), *dismissed sub nom. Delaware Dep’t of Natural Res. and Env’tl. Control v. FERC*, 558 F.3d 575 (D.C. Cir. 2009). “If every aspect of a project were required to be finalized before any part of the project could move forward, it would be very difficult, if not impossible, to construct such projects.” *Id.*

Obtaining the approvals necessary to support a certificate of public convenience and necessity is a multi-faceted undertaking that may require an applicant to satisfy the requirements of numerous state and federal agencies. For this reason, “virtually every order issued by the Commission that authorizes construction of natural gas facilities” is conditioned on the applicant’s compliance with environmental and other conditions set forth in the order. *Northwest Pipeline, GP*, 145 FERC ¶ 61,013, at P 13 (2013) (dismissing as moot a challenge to the Commission’s approval of a pipeline certificate action prior to the issuance of a Clean Water Act water quality certification, on the ground that the certification had

issued by the time of the order). “The Commission’s approach is a practical response to the reality that, in spite of the best efforts of those involved, an applicant might not be able to obtain all necessary approvals before the Commission issues an [Environmental Assessment] or certificate without unduly delaying the project.” Certificate Order at P 45, JA 62; Rehearing Order at P 21, JA 109. Indeed, some agencies had told Columbia Gas that they would not begin processing its permit or clearance requests until after the Commission issued an Environmental Assessment. Application at 2 n.2, JA 138.

Here Columbia Gas needed four authorizations from four different federal agencies (including the project certificate from the Commission), nine authorizations from four state agencies, and eight approvals, permits, or variances from five local agencies in order to build and operate the Pipeline Extension. EA at 3-5, JA 197-99 (Table A.4-1) (listing the permits, approvals, and consultations needed, along with the jurisdictional agencies). The Commission logically and reasonably concluded that it need not wait for other jurisdictional agencies to act first. *See* Certificate Order at P 46, JA 62 (“Placing the Commission’s administrative process on hold indefinitely until states with delegated federal authority act could delay in-service dates of natural gas projects to the detriment of consumers and the general public.”); Rehearing Order at P 21, JA 109 (same).

“In designing the Clean Water Act, Congress plainly intended an integration of both state and federal authority.” *Keating v. FERC*, 927 F.2d 616, 622 (D.C. Cir. 1991). Although the Clean Water Act does not allow states to approve interstate pipeline construction projects, it does empower states to block or to condition them. *See, e.g., Alcoa Power Generating Inc. v. FERC*, 643 F.3d 963, 971 (D.C. Cir. 2011) (certification authority granted to the states “the power to block, for environmental reasons, local water projects that otherwise might win federal approval”) (internal quotation marks and citations omitted). If a state denies a water quality certification, then the federal license or permit may not be granted, and if the state imposes conditions in its water quality certification, those conditions must be incorporated into the federal license. *Id.* This structure is similar to that of several other statutes that allow states to block or request changes to federally-approved projects. *See Delaware*, 558 F.3d at 576 (discussing Coastal Zone Management Act); *City of Grapevine, Texas v. U.S. Dep’t of Transp.*, 17 F.3d 1502, 1508-09 (D.C. Cir. 1994) (discussing National Historic Preservation Act).

The Environmental Assessment here demonstrates the Commission’s understanding that a Clean Water Act water quality certification was required before the project could proceed, and its respect for that statutory requirement. The certification is listed in the Environmental Assessment as outstanding. EA at

4, JA 198. The Environmental Assessment acknowledged that a water quality certification was required for this project. *Id.* at 35, JA 229. It recommended that the Commission condition approval of the project on receipt of all necessary state and federal authorizations, including this one. *Id.* at 136, 139, JA 330, 333 (“Prior to receiving written authorization [from Commission staff] to commence construction of any project facilities, Columbia [Gas] shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).”). And the Commission adopted this recommendation verbatim, as environmental condition 8 of its Certificate Order. Certificate Order at App. B, P 8, JA 98.

Section 7 of the Natural Gas Act does not address the specific timing issue the Commission faced, namely, whether FERC is authorized to approve pipeline construction subject to subsequent state and federal action under the Clean Water Act. But section 7 entrusts the Commission with the discretion to employ “such reasonable terms and conditions as the public convenience and necessity may require.” 15 U.S.C. § 717f(e). This discretion is very generous. *See, e.g., ANR Pipeline Co. v. FERC*, 876 F.2d 124, 129 (D.C. Cir. 1989). Conditional approval such as the Commission granted here allows it to construe the Natural Gas Act in harmony with other relevant federal statutes, “with appropriate respect for the practical demands facing an administrative agency and as necessary to accomplish

disparate statutory goals, without doing violence to such terms.” *Bradwood Landing LLC and NorthernStar Energy LLC*, 126 FERC ¶ 61,035, at P 35 (2009).

2. Petitioner’s Arguments to the Contrary Lack Merit

Gunpowder Riverkeeper contends (Br. 20-22) that the plain language of the Clean Water Act erects an absolute bar to Commission action on a project application prior to the issuance of a Clean Water Act certificate. Section 401(a)(1) of the Act provides that no federal “license or permit shall be granted until the” state certifies that any activity “which may result in a discharge into the navigable waters” will comply with the applicable provisions of the Act. 33 U.S.C. § 1341(a)(1). The Commission’s conditional approval of the Project does not conflict with this language. The order is an “incipient authorization without current force or effect,” since it does not allow the pipeline to begin the activity it proposes before the environmental conditions were satisfied. *Crown Landing*, 117 FERC ¶ 61,209, at P 21; *Finavera Renewables Ocean Energy, Ltd.*, 122 FERC ¶ 61,248, at P 15 (2008). *See also Pub. Utils. Comm’n of Calif.*, 900 F.2d at 282 (Commission did not err in granting certificate before environmental hearing was finished because agency can make “even a final decision” as long as it assesses the environmental data before the decision’s effective date).

Consistent with the language of Clean Water Act section 401, the orders on review ensure that until Maryland issues the water quality certification, Columbia

Gas may not begin the activity that may result in a discharge into navigable waters – construction on the Pipeline Extension. Columbia Gas “must file a state-issued certification that the project complies with the established water quality standards developed by Maryland [Department of the Environment] . . . to protect designated uses assigned to streams and rivers (e.g. potable water, recreation, and fishing) before the Commission issues a Notice to Proceed with Construction.” Rehearing Order at P 39, JA 116. *See also* Certificate Order at P 45, JA 62 (project construction cannot begin until Columbia Gas obtains all “necessary federal authorizations”). The Commission is, in fact, required to make sure not only that Maryland has issued the certification, but to “confirm that the state has facially satisfied the express requirements of section 401” with regard to public notice. *City of Tacoma v. FERC*, 460 F.3d 53, 67-68 (D.C. Cir. 2006). Consequently, there can be no adverse impact on the environment, and Columbia Gas cannot commence construction, until Maryland completes its review of the project under the Clean Water Act, and the Commission has received confirmation thereof.

Gunpowder Riverkeeper reads *City of Tacoma* to require the Clean Water Act water quality certification to issue before the Commission issues any license. Br. 20-21. But *City of Tacoma* did not evaluate the Commission’s authority to condition its approval of a project upon the successful completion of the state review process required by the Clean Water Act; “the court’s references in passing

to the Commission's granting a license or permit within the meaning of the statute are not directly construed." *Crown Landing*, 117 FERC ¶ 61,209, at P 27 n.38. The more applicable case is *City of Grapevine*, in which this Court upheld the use of analogous federal conditioning authority. 17 F.3d at 1508-09. There, this Court found that the Department of Transportation had not violated the National Historic Preservation Act by conditioning its approval of a new airport runway on the review process required by that federal statute. *Id.* This Court also declined to review the Commission's conditional approval, in another case under another section of the Natural Gas Act, of a liquefied natural gas terminal in Delaware subject to the state's certification of the project under the Clean Air Act and the Coastal Zone Management Act. The Court found that Delaware maintained its ability to block the project under those statutes and was not injured by the Commission's conditional ruling. *See Delaware*, 558 F.3d at 575, 578. *Cf. Dominion Transmission, Inc. v. Summers*, 723 F.3d 238 (D.C. Cir. 2013) (FERC certificate, issued under authority of the Natural Gas Act, obligated state (again, Maryland) to act on pipeline company's application for necessary state air quality permits).

Gunpowder Riverkeeper therefore has not demonstrated that the Commission, as a matter of law, is compelled to wait, and cannot issue even a

conditional certificate, until the applicant has first received other necessary approvals under the Clean Water Act (and other statutory authorities).

III. The Commission’s National Environmental Policy Act Analysis Was Comprehensive

The National Environmental Policy Act requires agencies that propose a major federal action significantly affecting the quality of the human environment to prepare a statement detailing the environmental impact of the action contemplated. 42 U.S.C. § 4332(2)(C). It is well-settled that agencies must take a “hard look” at the environmental consequences of their actions. *E.g., Kleppe v. Sierra Club*, 427 U.S. 390, 410 n.21 (1976).

The Environmental Assessment for the Pipeline Extension identified and analyzed effects of the project on geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, socioeconomics, cumulative impacts, and alternatives, and considered all substantive comments received during public scoping. Certificate Order at P 31, JA 57; EA at 20-92, JA 214-86 (topic-by-topic analysis). The Environmental Assessment concluded, and the Commission agreed, that if the Pipeline Extension were constructed and operated in accordance with Columbia Gas’s application and certain environmental conditions, it would not constitute a major federal action

significantly affecting the quality of the human environment. Certificate Order at P 150, JA 92; Rehearing Order at P 57, JA 122.

Gunpowder Riverkeeper claims that the Commission did not take a “hard look” at the impact of the Pipeline Extension on the bodies of water that the new pipeline would cross, particularly two water bodies listed on the National Park Service’s Nationwide Rivers Inventory.⁴ Br. 25-26. Instead, Gunpowder Riverkeeper alleges, the Commission improperly delegated its NEPA responsibilities to Maryland by relying on the forthcoming Clean Water Act water quality certification to conclude that there would be no adverse environmental impact on affected waters. *Id.* at 27-29.

A. Standard of Review

The Administrative Procedure Act’s “arbitrary and capricious” standard applies to challenges under NEPA. *Nevada v. Dep’t of Energy*, 457 F.3d 78, 87 (D.C. Cir. 2006). Thus, “under NEPA, the court’s role is simply to ensure that the agency has adequately considered and disclosed the environmental impact of its actions and that its decision is not arbitrary or capricious.” *Nat’l Comm. for the New River, Inc. v. FERC*, 373 F.3d 1323, 1327 (D.C. Cir. 2004) (denying appeal of FERC pipeline certificate decision) (quoting *Balt. Gas & Elec. Co.*, 462 U.S. at 97-

⁴ The Nationwide Rivers Inventory is “a listing of free-flowing river segments within the U.S. that are believed to possess one or more ‘[o]utstandingly remarkable’ natural or cultural values” of more than local or regional significance. EA at 37-38, JA 231-32.

98). *See also Robertson*, 490 U.S. at 350-51 (NEPA merely prohibits uninformed – rather than unwise – agency action).

Actions of administrative agencies taken pursuant to NEPA are entitled to a high degree of deference. *Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 377-78 (1989). “Courts may not use their review of an agency’s environmental analysis to second-guess substantive decisions committed to the discretion of the agency.” *Delaware Riverkeeper v. FERC*, 753 F.3d at 1313. This Court has consistently declined to “‘flyspeck’ an agency’s environmental analysis, looking for any deficiency no matter how minor.” *Theodore Roosevelt Conservation P’ship v. Salazar*, 661 F.3d 66, 75 (D.C. Cir. 2011). “[A]s long as the agency’s decision is ‘fully informed’ and ‘well-considered,’ it is entitled to judicial deference and a reviewing court should not substitute its own policy judgment.” *Natural Res. Def. Council, Inc. v. Hodel*, 865 F.2d 288, 294 (D.C. Cir. 1988) (quoting *North Slope Borough v. Andrus*, 642 F.2d 589, 599 (D.C. Cir. 1980)).

B. The Commission Took a Hard Look at Impacts of the Project on Water Quality

The Environmental Assessment for this project devoted 16 pages to issues of impacts on water resources and wetlands, including analysis of impacts on groundwater, surface water, and fisheries and aquatic resources. EA at 31-47, JA 225-41. Gunpowder Riverkeeper’s challenge to the Environmental Assessment appears primarily to concern surface water, because this is the section containing

the reference to the necessary Clean Water Act water quality certification by Maryland, and its timing in relation to the Commission's orders. *Id.* at 35, JA 229. The record demonstrates that the Commission properly understood its role, and Maryland's, in evaluating water quality issues.

First, the Environmental Assessment never states that it relies on Maryland's future findings under the Clean Water Act to support its finding of no significant impact. The Environmental Assessment merely paraphrases the statutory requirement that "an applicant for a federal license or permit to conduct any activity that may result in a discharge to waters of the state must provide the permitting agency with a water quality certification issued by the state from which the discharge originates." *Id.*

While Gunpowder Riverkeeper construes specific language of the Rehearing Order to mean that the Commission expected Maryland to address any water quality issues that it found, the Rehearing Order merely follows the language of the statute. Gunpowder Riverkeeper's rehearing request resubmits earlier comments concerning the impacts of the project on drinking water, and complains that the Environmental Assessment did not address these impacts. *Petition for Rehearing by Gunpowder Riverkeeper*, Docket No. CP13-8-001, at 13-14 (Dec. 20, 2013) R.214, JA 524-25. The Commission, properly recognizing that the Clean Water Act provides for state water quality standards to control the federal analysis,

correctly stated that a Clean Water Act water quality certification from Maryland is required in this case. Rehearing Order at P 39, JA 116.

The Commission's reliance on Maryland is in no way misplaced. As explained above, the Clean Water Act does, indeed, assign to the states responsibility to ensure that federally-approved projects will not diminish water quality below state-established standards. *See supra* pp. 6, 32. The Commission's regulations governing submission of certificate applications under section 7 of the Natural Gas Act acknowledge this, requiring that applicants identify "each Federal authorization that the proposal will require; [and] the Federal agency or officer, or the State agency or officer acting under delegated Federal authority, that will issue each required authorization." 18 C.F.R. § 157.14(a)(12). The conditioning language in the Environmental Assessment, which was incorporated into the orders, merely reflects the Commission's understanding that Maryland maintained authority to evaluate water quality impacts, and that Maryland had not yet acted. EA at 35, JA 229 (applicant must provide state water quality certification); Certificate Order at P 45, JA 62 (project construction cannot begin until Columbia Gas obtains the water quality certification); Rehearing Order at P 21, JA 109 (same).

Gunpowder Riverkeeper cites a single case, *Idaho v. ICC*, 35 F.3d 585 (D.C. Cir. 1994), to support its proposition that the Commission may not rely on the

environmental judgment of other agencies to support its NEPA analysis. Br. 27-29. In *Idaho*, the Coeur d'Alene Tribe asked the Interstate Commerce Commission to require a railroad to clean up pollution along a stretch of track, if the railroad were to try to salvage the line instead of abandoning it. The Interstate Commerce Commission approved abandonment, but it evaluated the public benefits and costs of salvaging the line, and imposed environmental conditions that would apply if the railroad attempted salvage. Among other conditions the Interstate Commerce Commission required was that the railroad consult various federal and state agencies to determine whether salvage complied with applicable federal laws, including the Water Pollution Control Act (Clean Water Act). *Idaho*, 35 F.2d at 589-90. If a Clean Water Act certification were required, the applicant was to “take the necessary steps to secure the permit.” *Id.*

Idaho is easily distinguished from this case for two reasons. First, the Interstate Commerce Commission prepared no Environmental Assessment or environmental impact statement at all with regard to the potential for salvaging the rail line; it approved salvage subject only to consultation with various agencies. *Id.* at 595. The Court found that this action did not constitute a “hard look” under NEPA, and that the Interstate Commerce Commission had improperly “deferred to the scrutiny of others by authorizing salvage subject to conditions” including consultation. *Id.* Second, as the Environmental Assessment in this case details,

extensive state and federal consultations have already taken place with regard to the Pipeline Extension, and the results of those consultations are reflected in the record of the Commission's environmental analysis. *See* EA at 36-38, JA 230-32.

In particular, the Environmental Assessment describes Columbia Gas's consultations with other agencies to identify sensitive water bodies and to evaluate the effects of the project on threatened species therein. *Id.* at 36-37, JA 230-31. With respect to the two water bodies listed on the National Rivers Inventory, the Environmental Assessment explains that the pipeline route would cross Gunpowder Falls, which is considered "outstandingly remarkable" because of its recreational path. *Id.* at 38, JA 232. (Gunpowder Falls also has been identified for future inclusion in the Maryland Wild and Scenic Rivers Program. *Id.*) The pipeline route also would cross Little Gunpowder Falls, which is particularly valued for historical and cultural reasons. *Id.*

Columbia Gas consulted with the National Park Service and other agencies about these crossings prior to filing its project application. *See* Application at App. D-1 (Agency Consultations – Public), Letter from R. Susemihl to Council on Environmental Quality (Oct. 9, 2012), JA 167. At FERC's request, Columbia Gas entered the National Park Service's recommendations for mitigating impacts of the river crossings into the record of this case. *See* Supplemental Information (Response to Data Request) of Columbia Gas (Jan. 7, 2013) R.75, JA 543, 565;

Letter from Jennifer Kerrigan, FERC, to Jennifer Franco, NiSource, at Encl. 2 (Dec. 17, 2012), R.70, JA 174, 177 (requesting a copy of the National Park Service’s letter). The National Park Service’s recommendations are reflected in the Environmental Assessment, which concludes that, based on implementation of the National Park Service’s recommendations and other mitigation measures, “we believe that the impacts on surface water resources resulting from construction and operation of the Project would not be significant.” EA at 39-41, JA 233-35. This conclusion, in turn, is reflected in the orders on review. *See* Certificate Order at PP 63-68 (waterbody crossing methods) and 69-78 (surface water quality), JA 67-69, 69-72; Rehearing Order at PP 26 and 30-34 (waterbody crossing methods) and 35-42 (surface water quality), JA 111, 113-14, 114-17.

Because Gunpowder Riverkeeper’s NEPA arguments “fall decidedly more into the ‘flyspecking’ camp than anything more,” the Court should deny the petition for review on this point. *Minisink*, 762 F.3d at 112.

CONCLUSION

For the foregoing reasons, the petition for review should be dismissed for lack of jurisdiction. In the alternative, the petition should be denied on its merits, and the FERC orders on review should be affirmed.

Respectfully submitted,

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FINAL BRIEF: November 24, 2014

CERTIFICATE OF COMPLIANCE

In accordance with Fed. R. App. P. 32(a)(7)(C)(ii), I certify that the Brief of Respondent Federal Energy Regulatory Commission contains 9,730 words, not including the tables of contents and authorities, the glossary, the certificates of counsel, and the addendum.

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November 24, 2014

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injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance. Nothing herein (1) affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or (2) confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 392; Pub. L. 94-574, §1, Oct. 21, 1976, 90 Stat. 2721.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 1009(a).	June 11, 1946, ch. 324, §10(a), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1976—Pub. L. 94-574 removed the defense of sovereign immunity as a bar to judicial review of Federal administrative action otherwise subject to judicial review.

§ 703. Form and venue of proceeding

The form of proceeding for judicial review is the special statutory review proceeding relevant to the subject matter in a court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus, in a court of competent jurisdiction. If no special statutory review proceeding is applicable, the action for judicial review may be brought against the United States, the agency by its official title, or the appropriate officer. Except to the extent that prior, adequate, and exclusive opportunity for judicial review is provided by law, agency action is subject to judicial review in civil or criminal proceedings for judicial enforcement.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 392; Pub. L. 94-574, §1, Oct. 21, 1976, 90 Stat. 2721.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 1009(b).	June 11, 1946, ch. 324, §10(b), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1976—Pub. L. 94-574 provided that if no special statutory review proceeding is applicable, the action for judicial review may be brought against the United States, the agency by its official title, or the appropriate officer as defendant.

§ 704. Actions reviewable

Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judi-

cial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final is final for the purposes of this section whether or not there has been presented or determined an application for a declaratory order, for any form of reconsideration, or, unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 392.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 1009(c).	June 11, 1946, ch. 324, §10(c), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface of this report.

§ 705. Relief pending review

When an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review. On such conditions as may be required and to the extent necessary to prevent irreparable injury, the reviewing court, including the court to which a case may be taken on appeal from or on application for certiorari or other writ to a reviewing court, may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 393.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 1009(d).	June 11, 1946, ch. 324, §10(d), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface of this report.

§ 706. Scope of review

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

- (1) compel agency action unlawfully withheld or unreasonably delayed; and
- (2) hold unlawful and set aside agency action, findings, and conclusions found to be—
 - (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
 - (B) contrary to constitutional right, power, privilege, or immunity;
 - (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
 - (D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or
 (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 393.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 1009(e).	June 11, 1946, ch. 324, § 10(e), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface of this report.

ABBREVIATION OF RECORD

Pub. L. 85-791, Aug. 28, 1958, 72 Stat. 941, which authorized abbreviation of record on review or enforcement of orders of administrative agencies and review on the original papers, provided, in section 35 thereof, that: "This Act [see Tables for classification] shall not be construed to repeal or modify any provision of the Administrative Procedure Act [see Short Title note set out preceding section 551 of this title]."

CHAPTER 8—CONGRESSIONAL REVIEW OF AGENCY RULEMAKING

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801.	Congressional review.
802.	Congressional disapproval procedure.
803.	Special rule on statutory, regulatory, and judicial deadlines.
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805.	Judicial review.
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808.	Effective date of certain rules.

§ 801. Congressional review

(a)(1)(A) Before a rule can take effect, the Federal agency promulgating such rule shall submit to each House of the Congress and to the Comptroller General a report containing—

- (i) a copy of the rule;
- (ii) a concise general statement relating to the rule, including whether it is a major rule; and
- (iii) the proposed effective date of the rule.

(B) On the date of the submission of the report under subparagraph (A), the Federal agency promulgating the rule shall submit to the Comptroller General and make available to each House of Congress—

- (i) a complete copy of the cost-benefit analysis of the rule, if any;
- (ii) the agency's actions relevant to sections 603, 604, 605, 607, and 609;
- (iii) the agency's actions relevant to sections 202, 203, 204, and 205 of the Unfunded Mandates Reform Act of 1995; and
- (iv) any other relevant information or requirements under any other Act and any relevant Executive orders.

(C) Upon receipt of a report submitted under subparagraph (A), each House shall provide copies of the report to the chairman and ranking member of each standing committee with jurisdiction under the rules of the House of Representatives or the Senate to report a bill to amend the provision of law under which the rule is issued.

(2)(A) The Comptroller General shall provide a report on each major rule to the committees of jurisdiction in each House of the Congress by the end of 15 calendar days after the submission or publication date as provided in section 802(b)(2). The report of the Comptroller General shall include an assessment of the agency's compliance with procedural steps required by paragraph (1)(B).

(B) Federal agencies shall cooperate with the Comptroller General by providing information relevant to the Comptroller General's report under subparagraph (A).

(3) A major rule relating to a report submitted under paragraph (1) shall take effect on the latest of—

- (A) the later of the date occurring 60 days after the date on which—
 - (i) the Congress receives the report submitted under paragraph (1); or
 - (ii) the rule is published in the Federal Register, if so published;

(B) if the Congress passes a joint resolution of disapproval described in section 802 relating to the rule, and the President signs a veto of such resolution, the earlier date—

- (i) on which either House of Congress votes and fails to override the veto of the President; or
- (ii) occurring 30 session days after the date on which the Congress received the veto and objections of the President; or

(C) the date the rule would have otherwise taken effect, if not for this section (unless a joint resolution of disapproval under section 802 is enacted).

(4) Except for a major rule, a rule shall take effect as otherwise provided by law after submission to Congress under paragraph (1).

(5) Notwithstanding paragraph (3), the effective date of a rule shall not be delayed by operation of this chapter beyond the date on which either House of Congress votes to reject a joint resolution of disapproval under section 802.

(b)(1) A rule shall not take effect (or continue), if the Congress enacts a joint resolution of disapproval, described under section 802, of the rule.

(2) A rule that does not take effect (or does not continue) under paragraph (1) may not be reissued in substantially the same form, and a new rule that is substantially the same as such a rule may not be issued, unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule.

(c)(1) Notwithstanding any other provision of this section (except subject to paragraph (3)), a rule that would not take effect by reason of subsection (a)(3) may take effect, if the President makes a determination under paragraph (2) and submits written notice of such determination to the Congress.

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- 1284. Limitations and conditions.
- 1285. Allotment of grant funds.
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- 1387. Authorization of appropriations.

CODIFICATION

The Federal Water Pollution Control Act, comprising this chapter, was originally enacted by act June 30, 1948, ch. 758, 62 Stat. 1155, and amended by acts July 17, 1952, ch. 927, 66 Stat. 755; July 9, 1956, ch. 518, §§1, 2, 70 Stat. 498-507; June 25, 1959, Pub. L. 86-70, 73 Stat. 141; July 12, 1960, Pub. L. 86-624, 74 Stat. 411; July 20, 1961, Pub. L. 87-88, 75 Stat. 204; Oct. 2, 1965, Pub. L. 89-234, 79 Stat. 903; Nov. 3, 1966, Pub. L. 89-753, 80 Stat. 1246; Apr. 3, 1970, Pub. L. 91-224, 84 Stat. 91; Dec. 31, 1970, Pub. L. 91-611, 84 Stat. 1818; July 9, 1971, Pub. L. 92-50, 85 Stat. 124; Oct. 13, 1971, Pub. L. 92-137, 85 Stat. 379; Mar. 1, 1972, Pub. L. 92-240, 86 Stat. 47, and was formerly classified first to section 466 et seq. of this title and later to section 1151 et seq. of this title. The act is shown herein, however, as having been added by Pub. L. 92-500 without reference to such intervening amendments because of the extensive amendment, reorganization, and expansion of the act's provisions by Pub. L. 92-500.

SUBCHAPTER I—RESEARCH AND RELATED PROGRAMS

§ 1251. Congressional declaration of goals and policy

(a) Restoration and maintenance of chemical, physical and biological integrity of Nation's waters; national goals for achievement of objective

The objective of this chapter is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. In order to achieve this objective it is hereby declared that, consistent with the provisions of this chapter—

- (1) it is the national goal that the discharge of pollutants into the navigable waters be eliminated by 1985;
- (2) it is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983;
- (3) it is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited;
- (4) it is the national policy that Federal financial assistance be provided to construct publicly owned waste treatment works;
- (5) it is the national policy that areawide waste treatment management planning processes be developed and implemented to assure adequate control of sources of pollutants in each State;

(6) it is the national policy that a major research and demonstration effort be made to develop technology necessary to eliminate the discharge of pollutants into the navigable waters, waters of the contiguous zone, and the oceans; and

(7) it is the national policy that programs for the control of nonpoint sources of pollution be developed and implemented in an expeditious manner so as to enable the goals of this chapter to be met through the control of both point and nonpoint sources of pollution.

(b) Congressional recognition, preservation, and protection of primary responsibilities and rights of States

It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources, and to consult with the Administrator in the exercise of his authority under this chapter. It is the policy of Congress that the States manage the construction grant program under this chapter and implement the permit programs under sections 1342 and 1344 of this title. It is further the policy of the Congress to support and aid research relating to the prevention, reduction, and elimination of pollution and to provide Federal technical services and financial aid to State and interstate agencies and municipalities in connection with the prevention, reduction, and elimination of pollution.

(c) Congressional policy toward Presidential activities with foreign countries

It is further the policy of Congress that the President, acting through the Secretary of State and such national and international organizations as he determines appropriate, shall take such action as may be necessary to insure that to the fullest extent possible all foreign countries shall take meaningful action for the prevention, reduction, and elimination of pollution in their waters and in international waters and for the achievement of goals regarding the elimination of discharge of pollutants and the improvement of water quality to at least the same extent as the United States does under its laws.

(d) Administrator of Environmental Protection Agency to administer chapter

Except as otherwise expressly provided in this chapter, the Administrator of the Environmental Protection Agency (hereinafter in this chapter called "Administrator") shall administer this chapter.

(e) Public participation in development, revision, and enforcement of any regulation, etc.

Public participation in the development, revision, and enforcement of any regulation, standard, effluent limitation, plan, or program established by the Administrator or any State under this chapter shall be provided for, encouraged, and assisted by the Administrator and the States. The Administrator, in cooperation with the States, shall develop and publish regulations specifying minimum guidelines for public participation in such processes.

(f) Procedures utilized for implementing chapter

It is the national policy that to the maximum extent possible the procedures utilized for implementing this chapter shall encourage the drastic minimization of paperwork and inter-agency decision procedures, and the best use of available manpower and funds, so as to prevent needless duplication and unnecessary delays at all levels of government.

(g) Authority of States over water

It is the policy of Congress that the authority of each State to allocate quantities of water within its jurisdiction shall not be superseded, abrogated or otherwise impaired by this chapter. It is the further policy of Congress that nothing in this chapter shall be construed to supersede or abrogate rights to quantities of water which have been established by any State. Federal agencies shall co-operate with State and local agencies to develop comprehensive solutions to prevent, reduce and eliminate pollution in concert with programs for managing water resources.

(June 30, 1948, ch. 758, title I, §101, as added Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 816; amended Pub. L. 95-217, §§5(a), 26(b), Dec. 27, 1977, 91 Stat. 1567, 1575; Pub. L. 100-4, title III, §316(b), Feb. 4, 1987, 101 Stat. 60.)

AMENDMENTS

1987—Subsec. (a)(7). Pub. L. 100-4 added par. (7).

1977—Subsec. (b). Pub. L. 95-217, §26(b), inserted provisions expressing Congressional policy that the States manage the construction grant program under this chapter and implement the permit program under sections 1342 and 1344 of this title.

Subsec. (g). Pub. L. 95-217, §5(a), added subsec. (g).

SHORT TITLE OF 2008 AMENDMENT

Pub. L. 110-365, §1, Oct. 8, 2008, 122 Stat. 4021, provided that: "This Act [amending sections 1268 and 1271a of this title] may be cited as the 'Great Lakes Legacy Reauthorization Act of 2008'."

Pub. L. 110-288, §1, July 29, 2008, 122 Stat. 2650, provided that: "This Act [amending sections 1322, 1342, and 1362 of this title] may be cited as the 'Clean Boating Act of 2008'."

SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107-303, §1(a), Nov. 27, 2002, 116 Stat. 2355, provided that: "This Act [enacting section 1271a of this title, amending sections 1254, 1266, 1268, 1270, 1285, 1290, 1324, 1329, 1330, and 1375 of this title, enacting provisions set out as notes under this section, section 1254 of this title, and section 1113 of Title 31, Money and Finance, and repealing provisions set out as a note under section 50 of Title 20, Education] may be cited as the 'Great Lakes and Lake Champlain Act of 2002'."

Pub. L. 107-303, title I, §101, Nov. 27, 2002, 116 Stat. 2355, provided that: "This title [enacting section 1271a of this title and amending section 1268 of this title] may be cited as the 'Great Lakes Legacy Act of 2002'."

Pub. L. 107-303, title II, §201, Nov. 27, 2002, 116 Stat. 2358, provided that: "This title [amending section 1270 of this title] may be cited as the 'Daniel Patrick Moynihan Lake Champlain Basin Program Act of 2002'."

SHORT TITLE OF 2000 AMENDMENTS

Pub. L. 106-457, title II, §201, Nov. 7, 2000, 114 Stat. 1967, provided that: "This title [amending section 1267 of this title and enacting provisions set out as a note under section 1267 of this title] may be cited as the 'Chesapeake Bay Restoration Act of 2000'."

Pub. L. 106-457, title IV, §401, Nov. 7, 2000, 114 Stat. 1973, provided that: "This title [amending section 1269

MASSACHUSETTS BAY PROTECTION; DEFINITION;
FINDINGS AND PURPOSE; FUNDING SOURCES

Pub. L. 100-653, title X, §§1002, 1003, 1005, Nov. 14, 1988, 102 Stat. 3835, 3836, provided that:

“SEC. 1002. DEFINITION.

“For purposes of this title [amending section 1330 of this title and enacting provisions set out as notes under sections 1251 and 1330 of this title], the term ‘Massachusetts Bay’ includes Massachusetts Bay, Cape Cod Bay, and Boston Harbor, consisting of an area extending from Cape Ann, Massachusetts south to the northern reach of Cape Cod, Massachusetts.

“SEC. 1003. FINDINGS AND PURPOSE.

“(a) FINDINGS.—The Congress finds and declares that—

“(1) Massachusetts Bay comprises a single major estuarine and oceanographic system extending from Cape Ann, Massachusetts south to the northern reaches of Cape Cod, encompassing Boston Harbor, Massachusetts Bay, and Cape Cod Bay;

“(2) several major riverine systems, including the Charles, Neponset, and Mystic Rivers, drain the watersheds of eastern Massachusetts into the Bay;

“(3) the shorelines of Massachusetts Bay, first occupied in the middle 1600’s, are home to over 4 million people and support a thriving industrial and recreational economy;

“(4) Massachusetts Bay supports important commercial fisheries, including lobsters, finfish, and shellfisheries, and is home to or frequented by several endangered species and marine mammals;

“(5) Massachusetts Bay also constitutes an important recreational resource, providing fishing, swimming, and boating opportunities to the region;

“(6) rapidly expanding coastal populations and pollution pose increasing threats to the long-term health and integrity of Massachusetts Bay;

“(7) while the cleanup of Boston Harbor will contribute significantly to improving the overall environmental quality of Massachusetts Bay, expanded efforts encompassing the entire ecosystem will be necessary to ensure its long-term health;

“(8) the concerted efforts of all levels of Government, the private sector, and the public at large will be necessary to protect and enhance the environmental integrity of Massachusetts Bay; and

“(9) the designation of Massachusetts Bay as an Estuary of National Significance and the development of a comprehensive plan for protecting and restoring the Bay may contribute significantly to its long-term health and environmental integrity.

“(b) PURPOSE.—The purpose of this title is to protect and enhance the environmental quality of Massachusetts Bay by providing for its designation as an Estuary of National Significance and by providing for the preparation of a comprehensive restoration plan for the Bay.

“SEC. 1005. FUNDING SOURCES.

“Within one year of enactment [Nov. 14, 1988], the Administrator of the United States Environmental Protection Agency and the Governor of Massachusetts shall undertake to identify and make available sources of funding to support activities pertaining to Massachusetts Bay undertaken pursuant to or authorized by section 320 of the Clean Water Act [33 U.S.C. 1330], and shall make every effort to coordinate existing research, monitoring or control efforts with such activities.”

PURPOSES AND POLICIES OF NATIONAL ESTUARY
PROGRAM

Pub. L. 100-4, title III, §317(a), Feb. 4, 1987, 101 Stat. 61, provided that:

“(1) FINDINGS.—Congress finds and declares that—

“(A) the Nation’s estuaries are of great importance for fish and wildlife resources and recreation and economic opportunity;

“(B) maintaining the health and ecological integrity of these estuaries is in the national interest;

“(C) increasing coastal population, development, and other direct and indirect uses of these estuaries threaten their health and ecological integrity;

“(D) long-term planning and management will contribute to the continued productivity of these areas, and will maximize their utility to the Nation; and

“(E) better coordination among Federal and State programs affecting estuaries will increase the effectiveness and efficiency of the national effort to protect, preserve, and restore these areas.

“(2) PURPOSES.—The purposes of this section [enacting this section] are to—

“(A) identify nationally significant estuaries that are threatened by pollution, development, or overuse;

“(B) promote comprehensive planning for, and conservation and management of, nationally significant estuaries;

“(C) encourage the preparation of management plans for estuaries of national significance; and

“(D) enhance the coordination of estuarine research.”

SUBCHAPTER IV—PERMITS AND LICENSES

§ 1341. Certification

(a) Compliance with applicable requirements; application; procedures; license suspension

(1) Any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate, or, if appropriate, from the interstate water pollution control agency having jurisdiction over the navigable waters at the point where the discharge originates or will originate, that any such discharge will comply with the applicable provisions of sections 1311, 1312, 1313, 1316, and 1317 of this title. In the case of any such activity for which there is not an applicable effluent limitation or other limitation under sections 1311(b) and 1312 of this title, and there is not an applicable standard under sections 1316 and 1317 of this title, the State shall so certify, except that any such certification shall not be deemed to satisfy section 1371(c) of this title. Such State or interstate agency shall establish procedures for public notice in the case of all applications for certification by it and, to the extent it deems appropriate, procedures for public hearings in connection with specific applications. In any case where a State or interstate agency has no authority to give such a certification, such certification shall be from the Administrator. If the State, interstate agency, or Administrator, as the case may be, fails or refuses to act on a request for certification, within a reasonable period of time (which shall not exceed one year) after receipt of such request, the certification requirements of this subsection shall be waived with respect to such Federal application. No license or permit shall be granted until the certification required by this section has been obtained or has been waived as provided in the preceding sentence. No license or permit shall be granted if certification has been denied by the State, interstate agency, or the Administrator, as the case may be.

(2) Upon receipt of such application and certification the licensing or permitting agency shall immediately notify the Administrator of

Congress shall consider the amount of any funds received by the Commission in addition to those funds appropriated to it by the Congress.

(Pub. L. 86-380, §9, as added Pub. L. 89-733, §6, Nov. 2, 1966, 80 Stat. 1162.)

CODIFICATION

Section was formerly classified to section 2379 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, §1, Sept. 6, 1966, 80 Stat. 378.

CHAPTER 54—CABINET COMMITTEE ON OPPORTUNITIES FOR SPANISH-SPEAKING PEOPLE

§§ 4301 to 4312. Omitted

CODIFICATION

Sections 4301 to 4312 of this title, Pub. L. 91-181, §§1-12, Dec. 30, 1969, 83 Stat. 838, were omitted pursuant to section 4312 of this title which provided that Pub. L. 91-181 shall expire five years after Dec. 30, 1969.

Section 4301, Pub. L. 91-181, §1, Dec. 30, 1969, 83 Stat. 838, related to Congressional declaration of purpose.

Section 4302, Pub. L. 91-181, §2, Dec. 30, 1969, 83 Stat. 838, related to establishment of Cabinet Committee on Opportunities for Spanish-Speaking People, its composition, appointment of Chairman.

Section 4303, Pub. L. 91-181, §3, Dec. 30, 1969, 83 Stat. 838, related to functions of Committee.

Section 4304, Pub. L. 91-181, §4, Dec. 30, 1969, 83 Stat. 839, related to administrative powers of the Committee.

Section 4305, Pub. L. 91-181, §5, Dec. 30, 1969, 83 Stat. 839, related to utilization of services and facilities of governmental agencies.

Section 4306, Pub. L. 91-181, §6, Dec. 30, 1969, 83 Stat. 839, related to compensation of personnel and transfer of personnel from other Federal departments and agencies.

Section 4307, Pub. L. 91-181, §7, Dec. 30, 1969, 83 Stat. 839, related to establishment of an Advisory Council on Spanish-Speaking Americans.

Section 4308, Pub. L. 91-181, §8, Dec. 30, 1969, 83 Stat. 840, related to nonimpairment of existing powers of other Federal departments and agencies.

Section 4309, Pub. L. 91-181, §9, Dec. 30, 1969, 93 Stat. 840, related to restrictions on political activities of Committee and Advisory Council.

Section 4310, Pub. L. 91-181, §10, Dec. 30, 1969, 83 Stat. 840; Pub. L. 92-122, Aug. 16, 1971, 85 Stat. 342, related to authorization of appropriations.

Section 4311, Pub. L. 91-181, §11, Dec. 30, 1969, 83 Stat. 840, related to submission of reports to the President and Congress.

Section 4312, Pub. L. 91-181, §12, Dec. 30, 1969, 83 Stat. 840, provided that this chapter shall expire five years after Dec. 30, 1969.

CHAPTER 55—NATIONAL ENVIRONMENTAL POLICY

Sec.	
4321.	Congressional declaration of purpose.
SUBCHAPTER I—POLICIES AND GOALS	
4331.	Congressional declaration of national environmental policy.
4332.	Cooperation of agencies; reports; availability of information; recommendations; international and national coordination of efforts.
4332a.	Accelerated decisionmaking in environmental reviews.
4333.	Conformity of administrative procedures to national environmental policy.
4334.	Other statutory obligations of agencies.
4335.	Efforts supplemental to existing authorizations.

Sec.	
SUBCHAPTER II—COUNCIL ON ENVIRONMENTAL QUALITY	
4341.	Omitted.
4342.	Establishment; membership; Chairman; appointments.
4343.	Employment of personnel, experts and consultants.
4344.	Duties and functions.
4345.	Consultation with Citizens' Advisory Committee on Environmental Quality and other representatives.
4346.	Tenure and compensation of members.
4346a.	Travel reimbursement by private organizations and Federal, State, and local governments.
4346b.	Expenditures in support of international activities.
4347.	Authorization of appropriations.
SUBCHAPTER III—MISCELLANEOUS PROVISIONS	
4361, 4361a.	Repealed.
4361b.	Implementation by Administrator of Environmental Protection Agency of recommendations of "CHESS" Investigative Report; waiver; inclusion of status of implementation requirements in annual revisions of plan for research, development, and demonstration.
4361c.	Staff management.
4362.	Interagency cooperation on prevention of environmental cancer and heart and lung disease.
4362a.	Membership of Task Force on Environmental Cancer and Heart and Lung Disease.
4363.	Continuing and long-term environmental research and development.
4363a.	Pollution control technologies demonstrations.
4364.	Expenditure of funds for research and development related to regulatory program activities.
4365.	Science Advisory Board.
4366.	Identification and coordination of research, development, and demonstration activities.
4366a.	Omitted.
4367.	Reporting requirements of financial interests of officers and employees of Environmental Protection Agency.
4368.	Grants to qualified citizens groups.
4368a.	Utilization of talents of older Americans in projects of pollution prevention, abatement, and control.
4368b.	General assistance program.
4369.	Miscellaneous reports.
4369a.	Reports on environmental research and development activities of Agency.
4370.	Reimbursement for use of facilities.
4370a.	Assistant Administrators of Environmental Protection Agency; appointment; duties.
4370b.	Availability of fees and charges to carry out Agency programs.
4370c.	Environmental Protection Agency fees.
4370d.	Percentage of Federal funding for organizations owned by socially and economically disadvantaged individuals.
4370e.	Working capital fund in Treasury.
4370f.	Availability of funds after expiration of period for liquidating obligations.
4370g.	Availability of funds for uniforms and certain services.
4370h.	Availability of funds for facilities.

§ 4321. Congressional declaration of purpose

The purposes of this chapter are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will pre-

vent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

(Pub. L. 91-190, § 2, Jan. 1, 1970, 83 Stat. 852.)

SHORT TITLE

Section 1 Pub. L. 91-190 provided: "That this Act [enacting this chapter] may be cited as the 'National Environmental Policy Act of 1969'."

TRANSFER OF FUNCTIONS

Enforcement functions of Secretary or other official in Department of the Interior related to compliance with system activities requiring coordination and approval under this chapter, and enforcement functions of Secretary or other official in Department of Agriculture, insofar as they involve lands and programs under jurisdiction of that Department, related to compliance with this chapter with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§102(e), (f), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in the Appendix to Title 5, Government Organization and Employees, Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102-486, set out as an Abolition of Office of Federal Inspector note under section 719e of Title 15, Commerce and Trade. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of Title 15.

EMERGENCY PREPAREDNESS FUNCTIONS

For assignment of certain emergency preparedness functions to Administrator of Environmental Protection Agency, see Parts 1, 2, and 16 of Ex. Ord. No. 12656, Nov. 18, 1988, 53 F.R. 47491, set out as a note under section 5195 of this title.

ENVIRONMENTAL PROTECTION AGENCY HEADQUARTERS

Pub. L. 112-237, § 2, Dec. 28, 2012, 126 Stat. 1628, provided that:

"(a) *Redesignation.*—The Environmental Protection Agency Headquarters located at 1200 Pennsylvania Avenue N.W. in Washington, D.C., known as the Ariel Rios Building, shall be known and redesignated as the 'William Jefferson Clinton Federal Building'.

"(b) *References.*—Any reference in a law, map, regulation, document, paper, or other record of the United States to the Environmental Protection Agency Headquarters referred to in subsection (a) shall be deemed to be a reference to the 'William Jefferson Clinton Federal Building'."

MODIFICATION OR REPLACEMENT OF EXECUTIVE ORDER No. 13423

Pub. L. 111-117, div. C, title VII, §742(b), Dec. 16, 2009, 123 Stat. 3216, provided that: "Hereafter, the President may modify or replace Executive Order No. 13423 [set out as a note under this section] if the President determines that a revised or new executive order will achieve equal or better environmental or energy efficiency results."

Pub. L. 111-8, div. D, title VII, §748, Mar. 11, 2009, 123 Stat. 693, which provided that Ex. Ord. No. 13423 (set out as a note under this section) would remain in effect on and after Mar. 11, 2009, except as otherwise provided

by law after Mar. 11, 2009, was repealed by Pub. L. 111-117, div. C, title VII, §742(a), Dec. 16, 2009, 123 Stat. 3216.

NECESSITY OF MILITARY LOW-LEVEL FLIGHT TRAINING TO PROTECT NATIONAL SECURITY AND ENHANCE MILITARY READINESS

Pub. L. 106-398, §1 [[div. A], title III, §317], Oct. 30, 2000, 114 Stat. 1654, 1654A-57, provided that: "Nothing in the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) or the regulations implementing such law shall require the Secretary of Defense or the Secretary of a military department to prepare a programmatic, nation-wide environmental impact statement for low-level flight training as a precondition to the use by the Armed Forces of an airspace for the performance of low-level training flights."

POLLUTION PROSECUTION

Pub. L. 101-593, title II, Nov. 16, 1990, 104 Stat. 2962, provided that:

"SEC. 201. SHORT TITLE.

"This title may be cited as the 'Pollution Prosecution Act of 1990'.

"SEC. 202. EPA OFFICE OF CRIMINAL INVESTIGATION.

"(a) The Administrator of the Environmental Protection Agency (hereinafter referred to as the 'Administrator') shall increase the number of criminal investigators assigned to the Office of Criminal Investigations by such numbers as may be necessary to assure that the number of criminal investigators assigned to the office—

"(1) for the period October 1, 1991, through September 30, 1992, is not less than 72;

"(2) for the period October 1, 1992, through September 30, 1993, is not less than 110;

"(3) for the period October 1, 1993, through September 30, 1994, is not less than 123;

"(4) for the period October 1, 1994, through September 30, 1995, is not less than 160;

"(5) beginning October 1, 1995, is not less than 200.

"(b) For fiscal year 1991 and in each of the following 4 fiscal years, the Administrator shall, during each such fiscal year, provide increasing numbers of additional support staff to the Office of Criminal Investigations.

"(c) The head of the Office of Criminal Investigations shall be a position in the competitive service as defined in 2102 of title 5 U.S.C. or a career reserve [reserved] position as defined in 3132(A) [3132(a)] of title 5 U.S.C. and the head of such office shall report directly, without intervening review or approval, to the Assistant Administrator for Enforcement.

"SEC. 203. CIVIL INVESTIGATORS.

"The Administrator, as soon as practicable following the date of the enactment of this Act [Nov. 16, 1990], but no later than September 30, 1991, shall increase by fifty the number of civil investigators assigned to assist the Office of Enforcement in developing and prosecuting civil and administrative actions and carrying out its other functions.

"SEC. 204. NATIONAL TRAINING INSTITUTE.

"The Administrator shall, as soon as practicable but no later than September 30, 1991 establish within the Office of Enforcement the National Enforcement Training Institute. It shall be the function of the Institute, among others, to train Federal, State, and local lawyers, inspectors, civil and criminal investigators, and technical experts in the enforcement of the Nation's environmental laws.

"SEC. 205. AUTHORIZATION.

"For the purposes of carrying out the provisions of this Act [probably should be "this title"], there is authorized to be appropriated to the Environmental Protection Agency \$13,000,000 for fiscal year 1991, \$18,000,000

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

(Pub. L. 91-190, title I, §101, Jan. 1, 1970, 83 Stat. 852.)

COMMISSION ON POPULATION GROWTH AND THE AMERICAN FUTURE

Pub. L. 91-213, §§1-9, Mar. 16, 1970, 84 Stat. 67-69, established the Commission on Population Growth and the American Future to conduct and sponsor such studies and research and make such recommendations as might be necessary to provide information and education to all levels of government in the United States, and to our people regarding a broad range of problems associated with population growth and their implications for America's future; prescribed the composition of the Commission; provided for the appointment of its members, and the designation of a Chairman and Vice Chairman; required a majority of the members of the Commission to constitute a quorum, but allowed a lesser number to conduct hearings; prescribed the compensation of members of the Commission; required the Commission to conduct an inquiry into certain prescribed aspects of population growth in the United States and its foreseeable social consequences; provided for the appointment of an Executive Director and other personnel and prescribed their compensation; authorized the Commission to enter into contracts with public agencies, private firms, institutions, and individuals for the conduct of research and surveys, the preparation of reports, and other activities necessary to the discharge of its duties, and to request from any Federal department or agency any information and assistance it deems necessary to carry out its functions; required the General Services Administration to provide administrative services for the Commission on a reimbursable basis; required the Commission to submit an interim report to the President and the Congress one year after it was established and to submit its final report two years after Mar. 16, 1970; terminated the Commission sixty days after the date of the submission of its final report; and authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such amounts as might be necessary to carry out the provisions of Pub. L. 91-213.

EXECUTIVE ORDER No. 11507

Ex. Ord. No. 11507, eff. Feb. 4, 1970, 35 F.R. 2573, which related to prevention, control, and abatement of air and water pollution at federal facilities was superseded by Ex. Ord. No. 11752, eff. Dec. 17, 1973, 38 F.R. 34793, formerly set out below.

EXECUTIVE ORDER No. 11752

Ex. Ord. No. 11752, Dec. 17, 1973, 38 F.R. 34793, which related to the prevention, control, and abatement of

environmental pollution at Federal facilities, was revoked by Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, set out as a note under section 4321 of this title.

§ 4332. Cooperation of agencies; reports; availability of information; recommendations; international and national coordination of efforts

The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this chapter, and (2) all agencies of the Federal Government shall—

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by subchapter II of this chapter, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—

- (i) the environmental impact of the proposed action,
- (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
- (iii) alternatives to the proposed action,
- (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
- (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, and shall accompany the proposal through the existing agency review processes;

(D) Any detailed statement required under subparagraph (C) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official, if:

(i) the State agency or official has state-wide jurisdiction and has the responsibility for such action,

(ii) the responsible Federal official furnishes guidance and participates in such preparation,

(iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and

(iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this chapter; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.¹

(E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(F) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(G) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(H) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(I) assist the Council on Environmental Quality established by subchapter II of this chapter.

(Pub. L. 91-190, title I, § 102, Jan. 1, 1970, 83 Stat. 853; Pub. L. 94-83, Aug. 9, 1975, 89 Stat. 424.)

AMENDMENTS

1975—Subpars. (D) to (I). Pub. L. 94-83 added subpar. (D) and redesignated former subpars. (D) to (H) as (E) to (I), respectively.

CERTAIN COMMERCIAL SPACE LAUNCH ACTIVITIES

Pub. L. 104-88, title IV, § 401, Dec. 29, 1995, 109 Stat. 955, provided that: "The licensing of a launch vehicle or launch site operator (including any amendment, extension, or renewal of the license) under [former] chapter 701 of title 49, United States Code [now chapter 509 (§ 50901 et seq.) of Title 51, National and Commercial Space Programs], shall not be considered a major Federal action for purposes of section 102(C) of the Na-

tional Environmental Policy Act of 1969 (42 U.S.C. 4332(C)) if—

"(1) the Department of the Army has issued a permit for the activity; and

"(2) the Army Corps of Engineers has found that the activity has no significant impact."

EX. ORD. NO. 13352. FACILITATION OF COOPERATIVE CONSERVATION

Ex. Ord. No. 13352, Aug. 26, 2004, 69 F.R. 52989, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

SECTION 1. *Purpose.* The purpose of this order is to ensure that the Departments of the Interior, Agriculture, Commerce, and Defense and the Environmental Protection Agency implement laws relating to the environment and natural resources in a manner that promotes cooperative conservation, with an emphasis on appropriate inclusion of local participation in Federal decisionmaking, in accordance with their respective agency missions, policies, and regulations.

SEC. 2. *Definition.* As used in this order, the term "cooperative conservation" means actions that relate to use, enhancement, and enjoyment of natural resources, protection of the environment, or both, and that involve collaborative activity among Federal, State, local, and tribal governments, private for-profit and nonprofit institutions, other nongovernmental entities and individuals.

SEC. 3. *Federal Activities.* To carry out the purpose of this order, the Secretaries of the Interior, Agriculture, Commerce, and Defense and the Administrator of the Environmental Protection Agency shall, to the extent permitted by law and subject to the availability of appropriations and in coordination with each other as appropriate:

(a) carry out the programs, projects, and activities of the agency that they respectively head that implement laws relating to the environment and natural resources in a manner that:

(i) facilitates cooperative conservation;

(ii) takes appropriate account of and respects the interests of persons with ownership or other legally recognized interests in land and other natural resources;

(iii) properly accommodates local participation in Federal decisionmaking; and

(iv) provides that the programs, projects, and activities are consistent with protecting public health and safety;

(b) report annually to the Chairman of the Council on Environmental Quality on actions taken to implement this order; and

(c) provide funding to the Office of Environmental Quality Management Fund (42 U.S.C. 4375) for the Conference for which section 4 of this order provides.

SEC. 4. *White House Conference on Cooperative Conservation.* The Chairman of the Council on Environmental Quality shall, to the extent permitted by law and subject to the availability of appropriations:

(a) convene not later than 1 year after the date of this order, and thereafter at such times as the Chairman deems appropriate, a White House Conference on Cooperative Conservation (Conference) to facilitate the exchange of information and advice relating to (i) cooperative conservation and (ii) means for achievement of the purpose of this order; and

(b) ensure that the Conference obtains information in a manner that seeks from Conference participants their individual advice and does not involve collective judgment or consensus advice or deliberation.

SEC. 5. *General Provision.* This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities or entities, its officers, employees or agents, or any other person.

GEORGE W. BUSH.

¹ So in original. The period probably should be a semicolon.

Sec.	
717e.	Ascertainment of cost of property.
717f.	Construction, extension, or abandonment of facilities.
717g.	Accounts; records; memoranda.
717h.	Rates of depreciation.
717i.	Periodic and special reports.
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717k.	Officials dealing in securities.
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717q.	Appointment of officers and employees.
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717s.	Enforcement of chapter.
717t.	General penalties.
717t-1.	Civil penalty authority.
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717u.	Jurisdiction of offenses; enforcement of liabilities and duties.
717v.	Separability.
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717x.	Conserved natural gas.
717y.	Voluntary conversion of natural gas users to heavy fuel oil.
717z.	Emergency conversion of utilities and other facilities.

§ 717. Regulation of natural gas companies

(a) Necessity of regulation in public interest

As disclosed in reports of the Federal Trade Commission made pursuant to S. Res. 83 (Seventieth Congress, first session) and other reports made pursuant to the authority of Congress, it is declared that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest.

(b) Transactions to which provisions of chapter applicable

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.

(c) Intrastate transactions exempt from provisions of chapter; certification from State commission as conclusive evidence

The provisions of this chapter shall not apply to any person engaged in or legally authorized to engage in the transportation in interstate commerce or the sale in interstate commerce for resale, of natural gas received by such person from another person within or at the boundary of a State if all the natural gas so received is ultimately consumed within such State, or to any

facilities used by such person for such transportation or sale, provided that the rates and service of such person and facilities be subject to regulation by a State commission. The matters exempted from the provisions of this chapter by this subsection are declared to be matters primarily of local concern and subject to regulation by the several States. A certification from such State commission to the Federal Power Commission that such State commission has regulatory jurisdiction over rates and service of such person and facilities and is exercising such jurisdiction shall constitute conclusive evidence of such regulatory power or jurisdiction.

(d) Vehicular natural gas jurisdiction

The provisions of this chapter shall not apply to any person solely by reason of, or with respect to, any sale or transportation of vehicular natural gas if such person is—

- (1) not otherwise a natural-gas company; or
- (2) subject primarily to regulation by a State commission, whether or not such State commission has, or is exercising, jurisdiction over the sale, sale for resale, or transportation of vehicular natural gas.

(June 21, 1938, ch. 556, §1, 52 Stat. 821; Mar. 27, 1954, ch. 115, 68 Stat. 36; Pub. L. 102-486, title IV, §404(a)(1), Oct. 24, 1992, 106 Stat. 2879; Pub. L. 109-58, title III, §311(a), Aug. 8, 2005, 119 Stat. 685.)

AMENDMENTS

2005—Subsec. (b). Pub. L. 109-58 inserted “and to the importation or exportation of natural gas in foreign commerce and to persons engaged in such importation or exportation.” after “such transportation or sale.”

1992—Subsec. (d). Pub. L. 102-486 added subsec. (d).

1954—Subsec. (c). Act Mar. 27, 1954, added subsec. (c).

TERMINATION OF FEDERAL POWER COMMISSION;
TRANSFER OF FUNCTIONS

Federal Power Commission terminated and functions, personnel, property, funds, etc., transferred to Secretary of Energy (except for certain functions transferred to Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a), 7291, and 7293 of Title 42, The Public Health and Welfare.

STATE LAWS AND REGULATIONS

Pub. L. 102-486, title IV, §404(b), Oct. 24, 1992, 106 Stat. 2879, provided that: “The transportation or sale of natural gas by any person who is not otherwise a public utility, within the meaning of State law—

“(1) in closed containers; or

“(2) otherwise to any person for use by such person as a fuel in a self-propelled vehicle, shall not be considered to be a transportation or sale of natural gas within the meaning of any State law, regulation, or order in effect before January 1, 1989. This subsection shall not apply to any provision of any State law, regulation, or order to the extent that such provision has as its primary purpose the protection of public safety.”

EMERGENCY NATURAL GAS ACT OF 1977

Pub. L. 95-2, Feb. 2, 1977, 91 Stat. 4, authorized President to declare a natural gas emergency and to require emergency deliveries and transportation of natural gas until the earlier of Apr. 30, 1977, or termination of emergency by President and provided for antitrust protection, emergency purchases, adjustment in charges for local distribution companies, relationship to Natural Gas Act, effect of certain contractual obligations, administrative procedure and judicial review, enforce-

any part of its property and a statement of the original cost thereof, and shall keep the Commission informed regarding the cost of all additions, betterments, extensions, and new construction.

(June 21, 1938, ch. 556, §6, 52 Stat. 824.)

§ 717f. Construction, extension, or abandonment of facilities

(a) Extension or improvement of facilities on order of court; notice and hearing

Whenever the Commission, after notice and opportunity for hearing, finds such action necessary or desirable in the public interest, it may by order direct a natural-gas company to extend or improve its transportation facilities, to establish physical connection of its transportation facilities with the facilities of, and sell natural gas to, any person or municipality engaged or legally authorized to engage in the local distribution of natural or artificial gas to the public, and for such purpose to extend its transportation facilities to communities immediately adjacent to such facilities or to territory served by such natural-gas company, if the Commission finds that no undue burden will be placed upon such natural-gas company thereby: *Provided*, That the Commission shall have no authority to compel the enlargement of transportation facilities for such purposes, or to compel such natural-gas company to establish physical connection or sell natural gas when to do so would impair its ability to render adequate service to its customers.

(b) Abandonment of facilities or services; approval of Commission

No natural-gas company shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or any service rendered by means of such facilities, without the permission and approval of the Commission first had and obtained, after due hearing, and a finding by the Commission that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience or necessity permit such abandonment.

(c) Certificate of public convenience and necessity

(1)(A) No natural-gas company or person which will be a natural-gas company upon completion of any proposed construction or extension shall engage in the transportation or sale of natural gas, subject to the jurisdiction of the Commission, or undertake the construction or extension of any facilities therefor, or acquire or operate any such facilities or extensions thereof, unless there is in force with respect to such natural-gas company a certificate of public convenience and necessity issued by the Commission authorizing such acts or operations: *Provided, however*, That if any such natural-gas company or predecessor in interest was bona fide engaged in transportation or sale of natural gas, subject to the jurisdiction of the Commission, on February 7, 1942, over the route or routes or within the area for which application is made and has so operated since that time, the Commission shall issue such certificate without requiring

further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission within ninety days after February 7, 1942. Pending the determination of any such application, the continuance of such operation shall be lawful.

(B) In all other cases the Commission shall set the matter for hearing and shall give such reasonable notice of the hearing thereon to all interested persons as in its judgment may be necessary under rules and regulations to be prescribed by the Commission; and the application shall be decided in accordance with the procedure provided in subsection (e) of this section and such certificate shall be issued or denied accordingly: *Provided, however*, That the Commission may issue a temporary certificate in cases of emergency, to assure maintenance of adequate service or to serve particular customers, without notice or hearing, pending the determination of an application for a certificate, and may by regulation exempt from the requirements of this section temporary acts or operations for which the issuance of a certificate will not be required in the public interest.

(2) The Commission may issue a certificate of public convenience and necessity to a natural-gas company for the transportation in interstate commerce of natural gas used by any person for one or more high-priority uses, as defined, by rule, by the Commission, in the case of—

- (A) natural gas sold by the producer to such person; and
- (B) natural gas produced by such person.

(d) Application for certificate of public convenience and necessity

Application for certificates shall be made in writing to the Commission, be verified under oath, and shall be in such form, contain such information, and notice thereof shall be served upon such interested parties and in such manner as the Commission shall, by regulation, require.

(e) Granting of certificate of public convenience and necessity

Except in the cases governed by the provisos contained in subsection (c)(1) of this section, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operation, sale, service, construction, extension, or acquisition covered by the application, if it is found that the applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of this chapter and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, sale, operation, construction, extension, or acquisition, to the extent authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied. The Commission shall have the power to attach to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require.

(f) Determination of service area; jurisdiction of transportation to ultimate consumers

(1) The Commission, after a hearing had upon its own motion or upon application, may deter-

mine the service area to which each authorization under this section is to be limited. Within such service area as determined by the Commission a natural-gas company may enlarge or extend its facilities for the purpose of supplying increased market demands in such service area without further authorization; and

(2) If the Commission has determined a service area pursuant to this subsection, transportation to ultimate consumers in such service area by the holder of such service area determination, even if across State lines, shall be subject to the exclusive jurisdiction of the State commission in the State in which the gas is consumed. This section shall not apply to the transportation of natural gas to another natural gas company.

(g) Certificate of public convenience and necessity for service of area already being served

Nothing contained in this section shall be construed as a limitation upon the power of the Commission to grant certificates of public convenience and necessity for service of an area already being served by another natural-gas company.

(h) Right of eminent domain for construction of pipelines, etc.

When any holder of a certificate of public convenience and necessity cannot acquire by contract, or is unable to agree with the owner of property to the compensation to be paid for, the necessary right-of-way to construct, operate, and maintain a pipe line or pipe lines for the transportation of natural gas, and the necessary land or other property, in addition to right-of-way, for the location of compressor stations, pressure apparatus, or other stations or equipment necessary to the proper operation of such pipe line or pipe lines, it may acquire the same by the exercise of the right of eminent domain in the district court of the United States for the district in which such property may be located, or in the State courts. The practice and procedure in any action or proceeding for that purpose in the district court of the United States shall conform as nearly as may be with the practice and procedure in similar action or proceeding in the courts of the State where the property is situated: *Provided*, That the United States district courts shall only have jurisdiction of cases when the amount claimed by the owner of the property to be condemned exceeds \$3,000.

(June 21, 1938, ch. 556, § 7, 52 Stat. 824; Feb. 7, 1942, ch. 49, 56 Stat. 83; July 25, 1947, ch. 333, 61 Stat. 459; Pub. L. 95-617, title VI, § 608, Nov. 9, 1978, 92 Stat. 3173; Pub. L. 100-474, § 2, Oct. 6, 1988, 102 Stat. 2302.)

AMENDMENTS

1988—Subsec. (f). Pub. L. 100-474 designated existing provisions as par. (1) and added par. (2).

1978—Subsec. (c). Pub. L. 95-617, § 608(a), (b)(1), designated existing first paragraph as par. (1)(A) and existing second paragraph as par. (1)(B) and added par. (2).

Subsec. (e). Pub. L. 95-617, § 608(b)(2), substituted “subsection (c)(1)” for “subsection (c)”.

1947—Subsec. (h). Act July 25, 1947, added subsec. (h).

1942—Subsecs. (c) to (g). Act Feb. 7, 1942, struck out subsec. (c), and added new subsecs. (e) to (g).

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-474, § 3, Oct. 6, 1988, 102 Stat. 2302, provided that: “The provisions of this Act [amending this sec-

tion and enacting provisions set out as a note under section 717w of this title] shall become effective one hundred and twenty days after the date of enactment [Oct. 6, 1988].”

TRANSFER OF FUNCTIONS

Enforcement functions of Secretary or other official in Department of Energy and Commission, Commissioners, or other official in Federal Energy Regulatory Commission related to compliance with certificates of public convenience and necessity issued under this section with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, § 102(d), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out under section 719e of this title. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102-486, set out as an Abolition of Office of Federal Inspector note under section 719e of this title. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720a(f) of this title.

§ 717g. Accounts; records; memoranda

(a) Rules and regulations for keeping and preserving accounts, records, etc.

Every natural-gas company shall make, keep, and preserve for such periods, such accounts, records of cost-accounting procedures, correspondence, memoranda, papers, books, and other records as the Commission may by rules and regulations prescribe as necessary or appropriate for purposes of the administration of this chapter: *Provided, however*, That nothing in this chapter shall relieve any such natural-gas company from keeping any accounts, memoranda, or records which such natural-gas company may be required to keep by or under authority of the laws of any State. The Commission may prescribe a system of accounts to be kept by such natural-gas companies, and may classify such natural-gas companies and prescribe a system of accounts for each class. The Commission, after notice and opportunity for hearing, may determine by order the accounts in which particular outlays or receipts shall be entered, charged, or credited. The burden of proof to justify every accounting entry questioned by the Commission shall be on the person making, authorizing, or requiring such entry, and the Commission may suspend a charge or credit pending submission of satisfactory proof in support thereof.

(b) Access to and inspection of accounts and records

The Commission shall at all times have access to and the right to inspect and examine all accounts, records, and memoranda of natural-gas companies; and it shall be the duty of such natural-gas companies to furnish to the Commission, within such reasonable time as the Commission may order, any information with respect thereto which the Commission may by order require, including copies of maps, contracts, reports of engineers, and other data, records, and papers, and to grant to all agents of the Commission free ac-

chapter to avail itself of such cooperation, services, records, and facilities as may be afforded by any State commission.

(c) Information and reports available to State commissions

The Commission shall make available to the several State commissions such information and reports as may be of assistance in State regulation of natural-gas companies. Whenever the Commission can do so without prejudice to the efficient and proper conduct of its affairs, it may, upon request from a State commission, make available to such State commission as witnesses any of its trained rate, valuation, or other experts, subject to reimbursement of the compensation and traveling expenses of such witnesses. All sums collected hereunder shall be credited to the appropriation from which the amounts were expended in carrying out the provisions of this subsection.

(June 21, 1938, ch. 556, §17, 52 Stat. 830.)

§ 717q. Appointment of officers and employees

The Commission is authorized to appoint and fix the compensation of such officers, attorneys, examiners, and experts as may be necessary for carrying out its functions under this chapter; and the Commission may, subject to civil-service laws, appoint such other officers and employees as are necessary for carrying out such functions and fix their salaries in accordance with chapter 51 and subchapter III of chapter 53 of title 5.

(June 21, 1938, ch. 556, §18, 52 Stat. 831; Oct. 28, 1949, ch. 782, title XI, §1106(a), 63 Stat. 972.)

CODIFICATION

Provisions that authorized the Commission to appoint and fix the compensation of such officers, attorneys, examiners, and experts as may be necessary for carrying out its functions under this chapter “without regard to the provisions of other laws applicable to the employment and compensation of officers and employees of the United States” are omitted as obsolete and superseded.

As to the compensation of such personnel, sections 1202 and 1204 of the Classification Act of 1949, 63 Stat. 972, 973, repealed the Classification Act of 1923 and all other laws or parts of laws inconsistent with the 1949 Act. The Classification Act of 1949 was repealed by Pub. L. 89-554, Sept. 6, 1966, §8(a), 80 Stat. 632, and reenacted as chapter 51 and subchapter III of chapter 53 of Title 5, Government Organization and Employees. Section 5102 of Title 5 contains the applicability provisions of the 1949 Act, and section 5103 of Title 5 authorizes the Office of Personnel Management to determine the applicability to specific positions and employees.

Such appointments are now subject to the civil service laws unless specifically excepted by those laws or by laws enacted subsequent to Executive Order 8743, Apr. 23, 1941, issued by the President pursuant to the Act of Nov. 26, 1940, ch. 919, title I, §1, 54 Stat. 1211, which covered most excepted positions into the classified (competitive) civil service. The Order is set out as a note under section 3301 of Title 5.

“Chapter 51 and subchapter III of chapter 53 of title 5” substituted in text for “the Classification Act of 1949, as amended” on authority of Pub. L. 89-554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5.

AMENDMENTS

1949—Act Oct. 28, 1949, substituted “Classification Act of 1949” for “Classification Act of 1923”.

REPEALS

Act Oct. 28, 1949, ch. 782, cited as a credit to this section, was repealed (subject to a savings clause) by Pub. L. 89-554, Sept. 6, 1966, §8, 80 Stat. 632, 655.

§ 717r. Rehearing and review

(a) Application for rehearing; time

Any person, State, municipality, or State commission aggrieved by an order issued by the Commission in a proceeding under this chapter to which such person, State, municipality, or State commission is a party may apply for a rehearing within thirty days after the issuance of such order. The application for rehearing shall set forth specifically the ground or grounds upon which such application is based. Upon such application the Commission shall have power to grant or deny rehearing or to abrogate or modify its order without further hearing. Unless the Commission acts upon the application for rehearing within thirty days after it is filed, such application may be deemed to have been denied. No proceeding to review any order of the Commission shall be brought by any person unless such person shall have made application to the Commission for a rehearing thereon. Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b) of this section, the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this chapter.

(b) Review of Commission order

Any party to a proceeding under this chapter aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the court of appeals of the United States for any circuit wherein the natural-gas company to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall forthwith be transmitted by the clerk of the court to any member of the Commission and thereupon the Commission shall file with the court the record upon which the order complained of was entered, as provided in section 2112 of title 28. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commis-

sion, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which is supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(c) Stay of Commission order

The filing of an application for rehearing under subsection (a) of this section shall not, unless specifically ordered by the Commission, operate as a stay of the Commission's order. The commencement of proceedings under subsection (b) of this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

(d) Judicial review

(1) In general

The United States Court of Appeals for the circuit in which a facility subject to section 717b of this title or section 717f of this title is proposed to be constructed, expanded, or operated shall have original and exclusive jurisdiction over any civil action for the review of an order or action of a Federal agency (other than the Commission) or State administrative agency acting pursuant to Federal law to issue, condition, or deny any permit, license, concurrence, or approval (hereinafter collectively referred to as "permit") required under Federal law, other than the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.).

(2) Agency delay

The United States Court of Appeals for the District of Columbia shall have original and exclusive jurisdiction over any civil action for the review of an alleged failure to act by a Federal agency (other than the Commission) or State administrative agency acting pursuant to Federal law to issue, condition, or deny any permit required under Federal law, other than the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.), for a facility subject to section 717b of this title or section 717f of this title. The failure of an agency to take action on a permit required under Federal law, other than the Coastal Zone Management Act of 1972, in accordance with the Commission schedule established pursuant to section 717n(c) of this title shall be considered inconsistent with Federal law for the purposes of paragraph (3).

(3) Court action

If the Court finds that such order or action is inconsistent with the Federal law governing such permit and would prevent the construction, expansion, or operation of the facility subject to section 717b of this title or section

717f of this title, the Court shall remand the proceeding to the agency to take appropriate action consistent with the order of the Court. If the Court remands the order or action to the Federal or State agency, the Court shall set a reasonable schedule and deadline for the agency to act on remand.

(4) Commission action

For any action described in this subsection, the Commission shall file with the Court the consolidated record of such order or action to which the appeal hereunder relates.

(5) Expedited review

The Court shall set any action brought under this subsection for expedited consideration.

(June 21, 1938, ch. 556, § 19, 52 Stat. 831; June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Pub. L. 85-791, § 19, Aug. 28, 1958, 72 Stat. 947; Pub. L. 109-58, title III, § 313(b), Aug. 8, 2005, 119 Stat. 689.)

REFERENCES IN TEXT

The Coastal Zone Management Act of 1972, referred to in subsec. (d)(1), (2), is title III of Pub. L. 89-454, as added by Pub. L. 92-583, Oct. 27, 1972, 86 Stat. 1280, as amended, which is classified generally to chapter 33 (§ 1451 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1451 of Title 16 and Tables.

CODIFICATION

In subsec. (b), "section 1254 of title 28" substituted for "sections 239 and 240 of the Judicial Code, as amended [28 U.S.C. 346, 347]" on authority of act June 25, 1948, ch. 646, 62 Stat. 869, the first section of which enacted Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

2005—Subsec. (d). Pub. L. 109-58 added subsec. (d).
1958—Subsec. (a). Pub. L. 85-791, § 19(a), inserted sentence providing that until record in a proceeding has been filed in a court of appeals, Commission may modify or set aside any finding or order issued by it.

Subsec. (b). Pub. L. 85-791, § 19(b), in second sentence, substituted "transmitted by the clerk of the court to" for "served upon", substituted "file with the court" for "certify and file with the court a transcript of", and inserted "as provided in section 2112 of title 28", and, in third sentence, substituted "petition" for "transcript", and "jurisdiction, which upon the filing of the record with it shall be exclusive" for "exclusive jurisdiction".

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "court of appeals" for "circuit court of appeals" wherever appearing.

§ 717s. Enforcement of chapter

(a) Action in district court for injunction

Whenever it shall appear to the Commission that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this chapter, or of any rule, regulation, or order thereunder, it may in its discretion bring an action in the proper district court of the United States, or the United States courts of any Territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices and to enforce compliance with this chapter or any rule, regulation, or order thereunder,

§ 157.1

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Subpart C [Reserved]

Subpart D—Exemption of Natural Gas Service for Drilling, Testing, or Purging from Certificate Requirements

157.53 Testing.

Subpart E [Reserved]

Subpart F—Interstate Pipeline Blanket Certificates and Authorization Under Section 7 of the Natural Gas Act for Certain Transactions and Abandonment

- 157.201 Applicability.
- 157.202 Definitions.
- 157.203 Blanket certification.
- 157.204 Application procedure.
- 157.205 Notice procedure.
- 157.206 Standard conditions.
- 157.207 General reporting requirements.
- 157.208 Construction, acquisition, operation, replacement, and miscellaneous rearrangement of facilities.
- 157.209 Temporary compression facilities.
- 157.210 Mainline natural gas facilities.
- 157.211 Delivery points.
- 157.212 Synthetic and liquefied natural gas facilities.
- 157.213 Underground storage field facilities.
- 157.214 Increase in storage capacity.
- 157.215 Underground storage testing and development.
- 157.216 Abandonment.
- 157.217 Changes in rate schedules.
- 157.218 Changes in customer name.

APPENDIX I TO SUBPART F—PROCEDURES FOR COMPLIANCE WITH THE ENDANGERED SPECIES ACT OF 1973 UNDER §157.206(b)(3)(i)

APPENDIX II TO SUBPART F—PROCEDURES FOR COMPLIANCE WITH THE NATIONAL HISTORIC PRESERVATION ACT OF 1966 UNDER §157.206(b)(3)(ii)

Subpart G—Natural Gas Producer Blanket Authorization for Sales and Abandonment [Reserved]

AUTHORITY: 15 U.S.C. 717–717z.

Subpart A—Applications for Certificates of Public Convenience and Necessity and for Orders Permitting and Approving Abandonment under Section 7 of the Natural Gas Act, as Amended, Concerning Any Operation, Sales, Service, Construction, Extension, Acquisition or Abandonment

§ 157.1 Definitions.

For the purposes of this part—

For the purposes of §157.21 of this part, *Director* means the Director of the Commission’s Office of Energy Projects.

Indian tribe means, in reference to a proposal or application for a certificate or abandonment, an Indian tribe which is recognized by treaty with the United States, by federal statute, or by the U.S. Department of the Interior in its periodic listing of tribal governments in the FEDERAL REGISTER in accordance with 25 CFR 83.6(b), and whose legal rights as a tribe may be affected by the proposed construction, operation or abandonment of facilities or services (as where the construction or operation of the proposed facilities could interfere with the tribe’s hunting or fishing rights or where the proposed facilities would be located within the tribe’s reservation).

Resource agency means a Federal, state, or interstate agency exercising administration over the areas of recreation, fish and wildlife, water resource management, or cultural or other relevant resources of the state or states in which the facilities or services for which a certificate or abandonment is proposed are or will be located.

[Order 608, 64 FR 51220, Sept. 22, 1999, as amended by Order 665, 70 FR 60440, Oct. 18, 2005]

§ 157.5 Purpose and intent of rules.

(a) Applications under section 7 of the Natural Gas Act shall set forth all information necessary to advise the

Commission fully concerning the operation, sales, service, construction, extension, or acquisition for which a certificate is requested or the abandonment for which permission and approval is requested. Some applications may be of such character that an abbreviated application may be justified under the provisions of §157.7. Applications for permission and approval to abandon pursuant to section 7(b) of the Act shall conform to §157.18 and to such other requirements of this part as may be pertinent. However, every applicant shall file all pertinent data and information necessary for a full and complete understanding of the proposed project, including its effect upon applicant's present and future operations and whether, and at what docket, applicant has previously applied for authorization to serve any portion of the market contemplated by the proposed project and the nature and disposition of such other project.

(b) Every requirement of this part shall be considered as a forthright obligation of the applicant which can only be avoided by a definite and positive showing that the information or data called for by the applicable rules is not necessary for the consideration and ultimate determination of the application.

(c) This part will be strictly applied to all applications as submitted and the burden of adequate presentation in intelligible form as well as justification for omitted data or information rests with the applicant.

[17 FR 7386, Aug. 14, 1952, as amended by Order 280, 29 FR 4876, Apr. 7, 1964]

§ 157.6 Applications; general requirements.

(a) *Applicable rules*—(1) *Submission required to be furnished by applicant under this subpart.* Applications, amendments thereto, and all exhibits and other submissions required to be furnished by an applicant to the Commission under this subpart must be submitted in an original and 7 conformed copies. To the extent that data required under this subpart has been provided to the Commission, this data need not be duplicated. The applicant must, however, include a statement identifying the forms and records containing the required infor-

mation and when that form or record was submitted.

(2) *Maps and diagrams.* An applicant required to submit a map or diagram under this subpart must submit one paper copy of the map or diagram.

(3) The following must be submitted in electronic format as prescribed by the Commission:

(i) Applications filed under this part 157 and all attached exhibits;

(ii) Applications covering acquisitions and all attached exhibits;

(iii) Applications for temporary certificates and all attached exhibits;

(iv) Applications to abandon facilities or services and all attached exhibits;

(v) The progress reports required under §157.20(c) and (d);

(vi) Applications submitted under subpart E of this part and all attached exhibits;

(vii) Applications submitted under subpart F of this part and all attached exhibits;

(viii) Requests for authorization under the notice procedures established in §157.205 and all attached exhibits;

(ix) The annual report required by §157.207;

(x) The report required under §157.214 when storage capacity is increased;

(xi) Amendments to any of the foregoing.

(4) All filings must be signed in compliance with the following.

(i) The signature on a filing constitutes a certification that: The signer has read the filing signed and knows the contents of the paper copies and electronic filing; the paper copies contain the same information as contained in the electronic filing; the contents as stated in the copies and in the electronic filing are true to the best knowledge and belief of the signer; and the signer possesses full power and authority to sign the filing.

(ii) A filing must be signed by one of the following:

(A) The person on behalf of whom the filing is made;

(B) An officer, agent, or employee of the governmental authority, agency, or instrumentality on behalf of which the filing is made; or,

(C) A representative qualified to practice before the Commission under

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§ 385.2101 of this chapter who possesses authority to sign.

(5) *Other requirements.* Applications under section 7 of the Natural Gas Act must conform to the requirements of §§ 157.5 through 157.14. Amendments to or withdrawals of applications must conform to the requirements of §§ 385.215 and 385.216 of this chapter. If the application involves an acquisition of facilities, it must conform to the additional requirements prescribed in §§ 157.15 and 157.16. If the application involves an abandonment of facilities or service, it must conform to the additional requirements prescribed in § 157.18.

(b) *General content of application.* Each application filed other than an application for permission and approval to abandon pursuant to section 7(b) shall set forth the following information:

(1) The exact legal name of applicant; its principal place of business; whether an individual, partnership, corporation, or otherwise; State under the laws of which organized or authorized; and the name, title, and mailing address of the person or persons to whom communications concerning the application are to be addressed.

(2) The facts relied upon by applicant to show that the proposed service, sale, operation, construction, extension, or acquisition is or will be required by the present or future public convenience and necessity.

(3) A concise description of applicant's existing operations.

(4) A concise description of the proposed service, sale, operation, construction, extension, or acquisition, including the proposed dates for the beginning and completion of construction, the commencement of operations and of acquisition, where involved.

(5) A full statement as to whether any other application to supplement or effectuate applicant's proposals must be or is to be filed by applicant, any of applicant's customers, or any other person, with any other Federal, State, or other regulatory body; and if so, the nature and status of each such application.

(6) A table of contents which shall list all exhibits and documents filed in compliance with §§ 157.5 through 157.18,

as well as all other documents and exhibits otherwise filed, identifying them by their appropriate titles and alphabetical letter designations. The alphabetical letter designations specified in §§ 157.14, 157.16, and 157.18 must be strictly adhered to and extra exhibits submitted at the volition of applicant shall be designated in sequence under the letter Z (Z1, Z2, Z3, etc.).

(7) A form of notice of the application suitable for publication in the FEDERAL REGISTER in accordance with the specifications in § 385.203(d) of this chapter.

(8) For applications to construct new facilities, detailed cost-of-service data supporting the cost of the expansion project, a detailed study showing the revenue responsibility for each firm rate schedule under the pipeline's currently effective rate design and under the pipeline's proposed rates, a detailed rate impact analysis by rate schedule (including by zone, if applicable), and an analysis reflecting the impact of the fuel usage resulting from the proposed expansion project (including by zone, if applicable).

(c) *Requests for shortened procedure.* If shortened procedure is desired a request therefor shall be made in conformity with § 385.802 of this chapter and may be included in the application or filed separately.

(d) *Landowner notification.* (1) For all applications filed under this subpart which include construction of facilities or abandonment of facilities (except for abandonment by sale or transfer where the easement will continue to be used for transportation of natural gas), the applicant shall make a good faith effort to notify all affected landowners and towns, communities, and local, state and federal governments and agencies involved in the project:

(i) By certified or first class mail, sent within 3 business days following the date the Commission issues a notice of the application; or

(ii) By hand, within the same time period; and

(iii) By publishing notice twice of the filing of the application, no later than 14 days after the date that a docket number is assigned to the application, in a daily or weekly newspaper of general circulation in each county in which the project is located.

(2) All affected landowners includes owners of property interests, as noted in the most recent county/city tax records as receiving the tax notice, whose property:

(i) Is directly affected (*i.e.*, crossed or used) by the proposed activity, including all facility sites (including compressor stations, well sites, and all above-ground facilities), rights of way, access roads, pipe and contractor yards, and temporary workspace;

(ii) Abuts either side of an existing right-of-way or facility site owned in fee by any utility company, or abuts the edge of a proposed facility site or right-of-way which runs along a property line in the area in which the facilities would be constructed, or contains a residence within 50 feet of the proposed construction work area;

(iii) Is within one-half mile of proposed compressors or their enclosures or LNG facilities; or

(iv) Is within the area of proposed new storage fields or proposed expansions of storage fields, including any applicable buffer zone.

(3) The notice shall include:

(i) The docket number of the filing;

(ii) The most recent edition of the Commission's pamphlet that explains the Commission's certificate process and addresses the basic concerns of landowners. Except: pipelines are not required to include the pamphlet in notifications of abandonments or in the published newspaper notice. Instead, they should provide the title of the pamphlet and indicate its availability at the Commission's Internet address;

(iii) A description of the applicant and the proposed project, its location (including a general location map), its purpose, and the timing of the project;

(iv) A general description of what the applicant will need from the landowner if the project is approved, and how the landowner may contact the applicant, including a local or toll-free phone number and a name of a specific person to contact who is knowledgeable about the project;

(v) A brief summary of what rights the landowner has at the Commission and in proceedings under the eminent domain rules of the relevant state. Except: pipelines are not required to include this information in the published

newspaper notice. Instead, the newspaper notice should provide the Commission's Internet address and the telephone number for the Commission's Office of External Affairs; and

(vi) Information on how the landowner can get a copy of the application from the company or the location(s) where a copy of the application may be found as specified in §157.10.

(vii) A copy of the Commission's notice of application, specifically stating the date by which timely motions to intervene are due, together with the Commission's information sheet on how to intervene in Commission proceedings. Except: pipelines are not required to include the notice of application and information sheet in the published newspaper notice. Instead, the newspaper notice should indicate that a separate notice is to be mailed to affected landowners and governmental entities.

(4) If the notice is returned as undeliverable, the applicant will make a reasonable attempt to find the correct address and notify the landowner.

(5) Within 30 days of the date the application was filed, applicant shall file an updated list of affected landowners, including information concerning notices that were returned as undeliverable.

(6) If paragraph (d)(3) of this section requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined by §388.113(c) of this chapter, to any person, the applicant shall follow the procedures set out in §157.10(d).

[17 FR 7386, Aug. 14, 1952]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §157.6, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 157.7 Abbreviated applications.

(a) *General.* When the operations sales, service, construction, extensions, acquisitions or abandonment proposed by an application do not require all the data and information specified by this part to disclose fully the nature and extent of the proposed undertaking, an abbreviated application may be filed in the manner prescribed in §385.2011 of this chapter, provided it contains all

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information and supporting data necessary to explain fully the proposed project, its economic justification, its effect upon applicant's present and future operations and upon the public proposed to be served, and is otherwise in conformity with the applicable requirements of this part regarding form, manner of presentation, and filing. Such an application shall (1) state that it is an abbreviated application; (2) specify which of the data and information required by this part are omitted; and (3) relate the facts relied upon to justify separately each such omission.

[Order 280, 29 FR 4876, Apr. 7, 1964]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 157.7, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 157.8 Acceptance for filing or rejection of applications.

Applications will be docketed when received and the applicant so advised.

(a) If an application patently fails to comply with applicable statutory requirements or with applicable Commission rules, regulations, and orders for which a waiver has not been granted, the Director of the Office of Energy Projects or the Director of the Office of Energy Market Regulation may reject the application within 10 business days of filing as provided by § 385.2001(b) of this chapter. This rejection is without prejudice to an applicant's refiling a complete application. However, an application will not be rejected solely on the basis of:

(1) Environmental reports that are incomplete because the company has not been granted access by the affected landowner(s) to perform required surveys; or,

(2) Environmental reports that are incomplete, but where the minimum checklist requirements of part 380, appendix A of this chapter have been met.

(b) An application which relates to an operation, sale, service, construction, extension, acquisition, or abandonment concerning which a prior application has been filed and rejected, shall be docketed as a new application. Such new application shall state the docket number of the prior rejected application.

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(c) The Director of the Office of Energy Projects or the Director of the Office of Energy Market Regulation may also reject an application after it has been noticed, at any time, if it is determined that such application does not conform to the requirements of this part.

[Order 603-A, 64 FR 54536, Oct. 7, 1999, as amended by Order 699, 72 FR 45325, Aug. 14, 2007; Order 701, 72 FR 61054, Oct. 29, 2007]

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

(a) Notice of each application filed, except when rejected in accordance with § 157.8, will be issued within 10 business days of filing, and subsequently will be published in the FEDERAL REGISTER and copies of such notice sent to States affected thereby, by electronic means if practical, otherwise by mail. Persons desiring to receive a copy of the notice of every application shall so advise the Secretary.

(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.

[Order 653, 70 FR 8724, Feb. 23, 2005, as amended by Order 687, 71 FR 62920, Oct. 27, 2006]

§ 157.10 Interventions and protests.

(a) Notices of applications, as provided by § 157.9, will fix the time within which any person desiring to participate in the proceeding may file a petition to intervene, and within which any interested regulatory agency, as provided by § 385.214 of this chapter, desiring to intervene may file its notice of intervention.

(1) Any person filing a petition to intervene or notice of intervention shall state specifically whether he seeks formal hearing on the application.

(2) Any person may file to intervene on environmental grounds based on the draft environmental impact statement as stated at § 380.10(a)(1)(i) of this chapter. In accordance with that section,

such intervention will be deemed timely as long as it is filed within the comment period for the draft environmental impact statement.

(3) Failure to make timely filing will constitute grounds for denial of participation in the absence of extraordinary circumstances or good cause shown.

(4) Protests may be filed in accordance with §385.211 of this chapter within the time permitted by any person who does not seek to participate in the proceeding.

(b) A copy of each application, supplement and amendment thereto, including exhibits required by §§157.14, 157.16, and 157.18, shall upon request be promptly supplied by the applicant to anyone who has filed a petition for leave to intervene or given notice of intervention.

(1) An applicant is not required to serve voluminous or difficult to reproduce material, such as copies of certain environmental information, to all parties, as long as such material is publicly available in an accessible central location in each county throughout the project area.

(2) An applicant shall make a good faith effort to place the materials in a public location that provides maximum accessibility to the public.

(c) Complete copies of the application must be available in accessible central locations in each county throughout the project area, either in paper or electronic format, within three business days of the date a filing is issued a docket number. Within five business days of receiving a request for a complete copy from any party, the applicant must serve a full copy of any filing on the requesting party. Such copy may exclude voluminous or difficult to reproduce material that is publicly available. Pipelines must keep all voluminous material on file with the Commission and make such information available for inspection at buildings with public access preferably with evening and weekend business hours, such as libraries located in central locations in each county throughout the project area.

(d) *Critical Energy Infrastructure Information.* (1) If this section requires an applicant to reveal Critical Energy In-

frastructure Information (CEII), as defined in §388.113(c) of this chapter, to the public, the applicant shall omit the CEII from the information made available and insert the following in its place:

(i) A statement that CEII is being withheld;

(ii) A brief description of the omitted information that does not reveal any CEII; and

(iii) This statement: "Procedures for obtaining access to Critical Energy Infrastructure Information (CEII) may be found at 18 CFR 388.113. Requests for access to CEII should be made to the Commission's CEII Coordinator."

(2) The applicant, in determining whether information constitutes CEII, shall treat the information in a manner consistent with any filings that applicant has made with the Commission and shall to the extent practicable adhere to any previous determinations by the Commission or the CEII Coordinator involving the same or like information.

(3) The procedures contained in §§388.112 and 388.113 of this chapter regarding designation of, and access to, CEII, shall apply in the event of a challenge to a CEII designation or a request for access to CEII. If it is determined that information is not CEII or that a requester should be granted access to CEII, the applicant will be directed to make the information available to the requester.

(4) Nothing in this section shall be construed to prohibit any persons from voluntarily reaching arrangements or agreements calling for the disclosure of CEII.

[Order 603-A, 64 FR 54536, Oct. 7, 1999, as amended by Order 643, 68 FR 52095, Sept. 2, 2003]

§ 157.11 Hearings.

(a) *General.* The Commission will schedule each application for public hearing at the earliest date possible giving due consideration to statutory requirements and other matters pending, with notice thereof as provided by §1.19(b) of this chapter: *Provided, however,* That when an application is filed less than fifteen days prior to the commencement of a hearing theretofore ordered on a pending application and

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seeks authority to serve some or all of the markets sought in such pending application or is otherwise competitive with such pending application, the Commission will not schedule the new application for hearing until it has rendered its final decision on such pending application, except when, on its own motion, or on appropriate application, it finds that the public interest requires otherwise.

(b) *Shortened procedure.* If no protest or petition to intervene raises an issue of substance, the Commission may upon request of the applicant dispose of an application in accordance with the provisions of § 385.802 of this chapter.

[17 FR 7386, Aug. 14, 1952, as amended by Order 225, 47 FR 19057, May 3, 1982]

§ 157.12 Dismissal of application.

Except for good cause shown, failure of an applicant to go forward on the date set for hearing and present its full case in support of its application will constitute ground for the summary dismissal of the application and the termination of the proceedings.

[17 FR 7386, Aug. 14, 1952]

§ 157.13 Form of exhibits to be attached to applications.

Each exhibit attached to an application must conform to the following requirements:

(a) *General requirements.* Each exhibit must be submitted in the manner prescribed in §§ 157.6(a) and 385.2011 of this chapter and contain a title page showing applicant's name, docket number (to be left blank), title of the exhibit, the proper letter designation of the exhibit, and, if of 10 or more pages, a table of contents, citing by page, section number or subdivision, the component elements or matters therein contained.

(b) *Reference to annual reports and previous applications.* An application may refer to annual reports and previous applications filed with the Commission and shall specify the exact pages or exhibit numbers of the filing to which reference is made, including the page numbers in any exhibit to which reference is made. When reference is made to a previous application the docket number shall be stated. No part of a re-

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jected application may be incorporated by reference.

(c) *Interdependent applications.* When an application considered alone is incomplete and depends vitally upon information in another application, it will not be accepted for filing until the supporting application has been filed. When applications are interdependent, they shall be filed concurrently.

(d) *Measurement base.* All gas volumes, including gas purchased from producers, shall be stated upon a uniform basis of measurement, and, in addition, if the uniform basis of measurement used in any application is other than 14.73 p.s.i.a., then any volume or volumes delivered to or received from any interstate natural-gas pipeline company shall also be stated upon a basis of 14.73 p.s.i.a.; similarly, total volumes on all summary sheets, as well as grand totals of volumes in any exhibit, shall also be stated upon a basis of 14.73 p.s.i.a. if the uniform basis of measurement used is other than 14.73 p.s.i.a.

[17 FR 7387, Aug. 14, 1952, as amended by Order 185, 21 FR 1486, Mar. 8, 1956; Order 280, 29 FR 4877, Apr. 7, 1964; Order 493, 53 FR 15029, Apr. 27, 1988]

§ 157.14 Exhibits.

(a) *To be attached to each application.* All exhibits specified must accompany each application when tendered for filing. Together with each exhibit applicant must provide a full and complete explanation of the data submitted, the manner in which it was obtained, and the reasons for the conclusions derived from the exhibits. If the Commission determines that a formal hearing upon the application is required or that testimony and hearing exhibits should be filed, the Secretary will promptly notify the applicant that submittal of all exhibits and testimony of all witnesses to be sponsored by the applicant in support of his case-in-chief is required. Submittal of these exhibits and testimony must be within 20 days from the date of the Secretary's notice, or any other time as the Secretary will specify. Exhibits, except exhibits F, F-1, G, G-1, and G-II, must be submitted to the Commission on electronic media as prescribed in § 385.2011 of this chapter. Interveners and persons becoming

interveners after the date of the Secretary's notice must be advised by the applicant of the afore-specified exhibits and testimony, and must be furnished with copies upon request. If this section requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined by §388.113(c) of this chapter, to any person, the applicant shall follow the procedures set out in §157.10(d).

(1) *Exhibit A—Articles of incorporation and bylaws.* If applicant is not an individual, a conformed copy of its articles of incorporation and bylaws, or other similar documents.

(2) *Exhibit B—State authorization.* For each State where applicant is authorized to do business, a statement showing the date of authorization, the scope of the business applicant is authorized to carry on and all limitations, if any, including expiration dates and renewal obligations. A conformed copy of applicant's authorization to do business in each State affected shall be supplied upon request.

(3) *Exhibit C—Company officials.* A list of the names and business addresses of applicant's officers and directors, or similar officials if applicant is not a corporation.

(4) *Exhibit D—Subsidiaries and affiliation.* If applicant or any of its officers or directors, directly or indirectly, owns, controls, or holds with power to vote, 10 percent or more of the outstanding voting securities of any other person or organized group of persons engaged in production, transportation, distribution, or sale of natural gas, or of any person or organized group of persons engaged in the construction or financing of such enterprises or operations, a detailed explanation of each such relationship, including the percentage of voting strength represented by such ownership of securities. If any person or organized group of persons, directly or indirectly, owns, controls, or holds with power to vote, 10 percent or more of the outstanding voting securities of applicant—a detailed explanation of each such relationship.

(5) *Exhibit E—Other pending applications and filings.* A list of other applications and filings under sections 1, 3, 4 and 7 of the Natural Gas Act filed by the applicant which are pending before

the Commission at the time of the filing of an application and which directly and significantly affect the application filed, including an explanation of any material effect the grant or denial of those other applications and filings will have on the application and of any material effect the grant or denial of the application will have on those other applications and filings.

(6) *Exhibit F—Location of facilities.* Unless shown on Exhibit G or elsewhere, a geographical map of suitable scale and detail showing, and appropriately differentiating between all of the facilities proposed to be constructed, acquired or abandoned and existing facilities of applicant, the operation or capacity of which will be directly affected by the proposed facilities or the facilities proposed to be abandoned. This map, or an additional map, shall clearly show the relationship of the new facilities to the applicant's overall system and shall include:

(i) Location, length, and size of pipelines.

(ii) Location and size (rated horsepower) of compressor stations.

(iii) Location and designation of each point of connection of existing and proposed facilities with (a) main-line industrial customers, gas pipeline or distribution systems, showing towns and communities served and to be served at wholesale and retail, and (b) gas-producing and storage fields, or other sources of gas supply.

(6-a) *Exhibit F-I—Environmental report.* An environmental report as specified in §§380.3 and 380.12 of this chapter. Applicant must submit all appropriate revisions to Exhibit F-I whenever route or site changes are filed. These revisions should identify the locations by mile post and describe all other specific differences resulting from the route or site changes, and should not simply provide revised totals for the resources affected.

(7) *Exhibit G—Flow diagrams showing daily design capacity and reflecting operation with and without proposed facilities added.* A flow diagram showing daily design capacity and reflecting operating conditions with only existing facilities in operation. A second flow diagram showing daily design capacity and reflecting operating conditions

with both proposed and existing facilities in operation. Both flow diagrams shall include the following for the portion of the system affected:

(i) Diameter, wall thickness, and length of pipe installed and proposed to be installed and the diameter and wall thickness of the installed pipe to which connection is proposed.

(ii) For each proposed new compressor station and existing station, the size, type and number of compressor units, horsepower required, horsepower installed and proposed to be installed, volume of gas to be used as fuel, suction and discharge pressures, and compression ratio.

(iii) Pressures and volumes of gas at the main line inlet and outlet connections at each compressor station.

(iv) Pressures and volumes of gas at each intake and take-off point and at the beginning and terminus of the existing and proposed facilities and at the intake or take-off point of the existing facilities to which the proposed facilities are to be connected.

(8) *Exhibit G-I—Flow diagrams reflecting maximum capabilities.* If Exhibit G does not reflect the maximum deliveries which applicant's existing and proposed facilities would be capable of achieving under most favorable operating conditions with utilization of all facilities, include an additional diagram or diagrams to depict such maximum capabilities. If the horsepower, pipelines, or other facilities on the segment of applicant's system under consideration are not being fully utilized due, e.g., to capacity limitation of connecting facilities or because of the need for standby or spare equipment, the reason for such nonutilization shall be stated.

(9) *Exhibit G-II—Flow diagram data.* Exhibits G and G-I shall be accompanied by a statement of engineering design data in explanation and support of the diagrams and the proposed project, setting forth:

(i) Assumptions, bases, formulae, and methods used in the development and preparation of such diagrams and accompanying data.

(ii) A description of the pipe and fittings to be installed, specifying the diameter, wall thickness, yield point, ultimate tensile strength, method of fab-

rication, and methods of testing proposed.

(iii) When lines are looped, the length and size of the pipe in each loop.

(iv) Type, capacity, and location of each natural gas storage field or facility, and of each dehydration, desulphurization, natural gas liquefaction, hydrocarbon extraction, or other similar plant or facility directly attached to the applicant's system, indicating which of such plants are owned or operated by applicant, and which by others, giving their names and addresses.

(v) If the daily design capacity shown in *Exhibit G* is predicated upon an ability to meet each customer's maximum contract quantity on the same day, explain the reason for such coincidental peak-day design. If the design day capacity shown in *Exhibit G* is predicated upon an assumed diversity factor, state that factor and explain its derivation.

(vi) The maximum allowable operating pressure of each proposed facility for which a certificate is requested, as permitted by the Department of Transportation's safety standards. The applicant shall certify that it will design, install, inspect, test, construct, operate, replace, and maintain the facilities for which a certificate is requested in accordance with Federal safety standards and plans for maintenance and inspection or shall certify that it has been granted a waiver of the requirements of the safety standards by the Department of Transportation in accordance with the provisions of section 3(e) of the Natural Gas Pipeline Safety Act of 1968. Pertinent details concerning the waiver shall be set forth.

(10) *Exhibit H—Total gas supply data.* A statement by applicant describing:

(i) Those production areas accessible to the proposed construction that contain sufficient existing or potential gas supplies for the proposed project; and

(ii) How those production areas are connected to the proposed construction.

(11) *Exhibit I—Market data.* A system-wide estimate of the volumes of gas to be delivered during each of the first 3 full years of operation of the proposed service, sale, or facilities and during the years when the proposed facilities

are under construction, and actual data of like import for each of the 3 years next preceding the filing of the application, together with:

(i) Names and locations of customer companies and municipalities, showing the number of residential, commercial, firm industrial, interruptible industrial, residential space-heating, commercial space-heating, and other types of customers for each distribution system to be served at retail or wholesale; and the names and locations of each firm and interruptible direct industrial customer whose estimated consumption totals 10,000 Mcf or more in any calendar month or 100,000 Mcf or more per year together with an explanation of the end use to which each of these industrial customers will put the gas.

(ii) Applicant's total annual and peak day gas requirements by classification of service in paragraph (a)(11)(i) of this section, divided as follows: Gas requirements (a) for each distribution area where gas is sold by applicant at retail; (b) for each wholesale customer; (c) for all main line direct industrial customers; and (d) company use and unaccounted-for gas, for both the applicant and each wholesale customer.

(iii) Total past and expected curtailments of service by the applicant and each wholesale customer proposing to receive new or additional supplies of gas from the project, all to be listed by the classifications of service in paragraph (a)(11)(i) of this section.

(iv) Explanation and derivation of basic factors used in estimating future requirements, including, for example: Peak-day and annual degree-day deficiencies, annual load factors of applicant's system and of its deliveries to its proposed customers; individual consumer peak-day and annual consumption factors for each class of consumers, with supporting historical data; forecasted saturation of space-heating as related to past experience; and full detail as to all other sources of gas supply available to applicant and to each of its customers, including manufacturing facilities and liquid petroleum gas.

(v) Conformed copy of each contract, letter of intent or other agreement for sale or transportation of natural gas proposed by the application. Indicate

the rate to be charged. If no agreements have been made, indicate the basis for assuming that contracts will be consummated and that service will be rendered under the terms contemplated in the application.

(vi) A full description of all facilities, other than those covered by the application, necessary to provide service in the communities to be served, the estimated cost of such facilities, by whom they are to be constructed, and evidence of economic feasibility.

(vii) A copy of each market survey made within the past three years for such markets as are to receive new or increased service from the project applied for.

(viii) A statement showing the franchise rights of applicant or other person to distribute gas in each community in which service is proposed.

(ix) When an application requires a statement of total peak-day or annual market requirements of affiliates, whose operations are integrated with those of applicant, to demonstrate applicant's ability to provide the service proposed or to establish a gas supply, estimates and data required by this subparagraph shall also be stated in like detail for such affiliates.

(x) When the proposed project is for service which would not decrease the life index of the total system gas supply by more than one year, the data required in paragraphs (a)(11)(i) to (ix), inclusive, of this section need be submitted only as to the particular market to receive new or additional service.

(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.

(13) *Exhibit K—Cost of facilities.* A detailed estimate of total capital cost of the proposed facilities for which application is made, showing cost of construction by operating units such as

compressor stations, main pipelines, laterals, measuring and regulating stations, and separately stating the cost of right-of-way, damages, surveys, materials, labor, engineering and inspection, administrative overhead, fees for legal and other services, allowance for funds used during construction, and contingencies. Include a brief statement indicating the source of information used as the basis for the above estimate. If not otherwise set forth, submit data on preliminary bids, if any, for the proposed facilities and recent experienced cost data for facilities of similar character.

(14) *Exhibit L—Financing.* Plans for financing the proposed facilities for which the application is filed, together with:

(i) A description of the class (e.g., commercial paper, long-term debt, preferred stock) and cost rates for securities expected to be issued with construction period and post-operational sources of financing separately identified.

(ii) Statement of anticipated cash flow, including provision during the period of construction and the first 3 full years of operation of proposed facilities for interest requirements, dividends, and capital requirements.

(iii) A balance sheet and income statement (12 months) of most recent data available.

(iv) Comparative pro forma balance sheets and income statements for the period of construction and each of the first 3 full years of operation, giving effect to the proposed construction and proposed financing of the project.

(v) Any additional data and information upon which applicant proposes to rely in showing the adequacy and availability of resources for financing its proposed project.

(vi) In instances for which principal operations of the company have not commenced or where proposed rates for services are developed on an incremental basis, a brief statement explaining how the applicant will determine the actual allowance for funds used during construction (AFUDC) rate, or if a rate is not to be used, how the applicant will determine the actual amount of AFUDC to be capitalized as a component of construction cost, and

why the method is appropriate under the circumstances.

(15) *Exhibit M—Construction, operation, and management.* A concise statement setting forth arrangements for supervision, management, engineering, accounting, legal, or other similar service to be rendered in connection with the construction or operation of the project, if not to be performed by employees of applicant, including reference to any existing or contemplated agreements therefor, together with:

(i) A statement showing affiliation between applicant and any parties to such agreements or arrangements. See Exhibit D, paragraph (a)(4) of this section.

(ii) Conformed copies of all construction, engineering, management, and other similar service agreements or contracts in any way operative with respect to construction, operation, or financing of facilities which are the subject of the application or will be applicable under system operations.

(16) *Exhibit N—Revenues—Expenses—Income.* When the estimated revenues and expenses related to a proposed facility will significantly affect the operating revenues or operating expenses of an applicant, there shall be submitted a system-wide statement for the last year preceding the proposed construction or service and pro forma system-wide and incremental statements for each of the first three full years of operation of the proposed facilities, showing:

(i) Gas system annual revenues and volumes of natural gas related thereto, subdivided by classes of service, and further subdivided by sales to direct industrial customers, sales to other gas utilities, and other sales, indicating billing quantities used for computing charges, e. g., actual demands, billing demands, volumes, heat-content adjustment or other determinants. In addition, if enlargement or extension of facilities is involved, the revenues attributable solely to the proposed facilities shall be stated separately, and the basis and data used in such computation shall be clearly shown.

(ii) Gas system annual operating expenses classified in accordance with the Commission's Uniform System of Accounts for Natural Gas Companies;

the annual depreciation, depletion, taxes, utility income, and resulting rate of return on net investment in gas plant including working capital. In addition if enlargement or extension of facilities is involved, the cost of service attributable solely to the proposed facilities shall be stated separately with supporting data.

(iii) When the data required in paragraphs (a)(16)(i) and (ii) of this section is not submitted, applicant shall provide in lieu thereof a statement in sufficient detail to show clearly the effect on the operating revenues and operating expenses of the estimated revenues and expenses related to the proposed facility.

(17) *Exhibit O—Depreciation and depletion.* Depreciation and depletion rates to be established, the method of determination and the justification therefor.

(18) *Exhibit P—Tariff.* (i) A statement of the rates to be charged for the proposed sales or service, including:

(a) Identification of the applicable presently effective rate schedules, when no additional tariff filings will be required, or

(b) When changes are required in applicant's presently effective tariff, or if applicant has no tariff, pro forma copies of appropriate changes in or additions to the effective tariff or a pro forma copy of the new gas tariff proposed, or

(c) When a new rate is proposed, a statement explaining the basis used in arriving at the proposed rate. Such statement shall clearly show whether such rate results from negotiation, cost-of-service determination, competitive factors or others, and shall give the nature of any studies which have been made in connection therewith.

(ii) When new rates or changes in present rates are proposed or when the proposed facilities will result in a material change in applicant's average cost of service, such statement shall be accompanied by supporting data showing:

(a) System cost of service for the first calendar year of operation after the proposed facilities are placed in service.

(b) An allocation of such costs to each particular service classification,

with the basis for each allocation clearly stated.

(c) The proposed rate base and rate of return.

(d) Gas operating expenses, segregated functionally by accounts.

(e) Depletion and depreciation.

(f) Taxes with the basis upon which computed.

(b) *Additional exhibits.* Applicant shall submit additional exhibits necessary to support or clarify its application. Such exhibits shall be identified and designated as provided by §157.6(b)(6).

(c) *Additional information.* Upon request by the Secretary, prior to or during hearing upon the application, applicant shall submit such additional data, information, exhibits, or other detail as may be specified. An original and 7 conformed copies of such additional information shall be furnished to the Commission. The Commission reserves the right to request additional copies.

(d) *Availability of Commission staff for advice prior to formal filing.* Prior to filing an application, any person may informally confer with the staff of the Commission to obtain advice on any problem of statement or presentation of an application or any part thereof.

(Secs. 3(e), 7, 8, 82 Stat. 721, 725 (49 U.S.C. 1672, 1676, 1677; Natural Gas Act (15 U.S.C. 717-717w); Natural Gas Policy Act (15 U.S.C. 3301-3432); Department of Energy Organization Act (42 U.S.C. 7101-7352); E.O. 12009, 3 CFR 142)

[17 FR 7387, Aug. 14, 1952]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §157.14, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 157.15 Requirements for applications covering acquisitions.

An application for a certificate authorizing acquisition of facilities, in addition to complying with the applicable provisions of §§157.5 through 157.14, shall include a statement showing:

(a) The exact legal name of the vendor, lessor, or other party in interest (hereinafter referred to as "vendor") the State or other laws under which vendor was organized, location of vendor's principal place of business, and a description of the business, operation

or property of vendor covered by the application.

(b) Any certificate from the Commission, held by vendor, relating directly to the facilities which applicant seeks to acquire, citing the order, date thereof, docket designation, and title of the proceeding; reference to and designation of any companion applications by vendor for permission and approval pursuant to section 7(b) of the Natural Gas Act.

(c) The manner in which the facilities are to be acquired, the consideration to be paid, the method of arriving at the amount thereof, and anticipated expenses in addition to the consideration.

(d) The facilities to be acquired, their present use, their proposed use after acquisition, and whether they constitute all of vendor's facilities.

(e) Any franchise, license, or permit respecting the facilities involved, showing expiration date thereof, and the effect of the proposed acquisition thereon.

[17 FR 7389, Aug. 14, 1952]

§ 157.16 Exhibits relating to acquisitions.

In addition to the exhibits required by § 157.14, every application involving acquisition of facilities must be accompanied by the exhibits listed below. Together with each exhibit applicant must provide a full and complete explanation of the data submitted, the manner in which it was obtained, and the reasons for the conclusions derived from the exhibits, unless the applicant includes a statement identifying the schedule and rate containing the required information and data filed as prescribed in § 385.2011 of this chapter. If the Commission determines that a formal hearing upon the application is required or that testimony and hearing exhibits should be filed, the Secretary will promptly notify the applicant that submittal of all the exhibits and testimony of all witnesses to be sponsored by the applicant in support of his case-in-chief is required. Submittal of these exhibits and testimony must be within 20 days from the date of the Secretary's notice, or any other time specified by the Secretary in the notice. Sections 157.6(a) and 385.2011 of this

chapter will govern the submissions required to be furnished to the Commission. Interveners and persons becoming interveners after the date of the Secretary's notice must be advised by the applicant of the afore-specified exhibits and testimony, and must be furnished with copies upon request. If this section requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined by § 388.113(c) of this chapter, to any person, the applicant shall follow the procedures set out in § 157.10(d).

(a) *Exhibit Q—Effect of acquisition on existing contracts and tariffs.* A statement showing the effect of the proposed transaction upon any agreements for the purchase, sale, or interchange of natural gas, and upon any rate schedules or tariffs on file with this Commission, together with pro forma rate schedule sheets, notices of cancellation, or other tariff filings required to be made with this Commission.

(b) *Exhibit R—Acquisition contracts.* A summary statement of all contracts, agreements or undertakings relating to the proposed acquisition, including:

(1) A conformed copy of each contract or other agreement covering or relating to the acquisition of the facilities.

(2) The names and addresses of all persons employed or to be employed concerning the transaction, including engineering, financial accounting, legal, or other services, and the compensation, fees, or other payments, paid or payable, to such persons.

(3) A disclosure of affiliation between applicant and vendor or between either of them and any other party in interest in the proposed acquisition. See Exhibit D, § 157.14(a)(4).

(c) *Exhibit S—Accounting.* A statement showing:

(1) The amounts recorded upon the books of the vendor, as being applicable to the facilities to be acquired, and the related depreciation, depletion, and amortization reserves. Include a brief statement explaining the basis or methods used to derive the related depreciation, depletion and amortization reserves.

(2) The original cost of the facilities to be acquired, segregated by accounts

prescribed in the Commission's Uniform System of Accounts for Natural Gas Companies; the method by which the original cost was determined; and whether such statement of original cost has been approved by any regulatory body.

(3) If the original cost has not been determined, an estimate thereof, based upon records or data of vendor or its predecessors, together with an explanation of the manner in which such estimate was made and the name and address of the present custodian of all existing pertinent records and data.

(4) The depreciation, depletion, and amortization reserve requirements applicable to the original cost of the facilities to be acquired, estimated service lives, the approximate average age of the facilities to which the depreciation reserve applies, the amortization period, and the depletion rates and estimated gas reserves upon which accruals to the depletion reserve are based.

(5) The amount at which applicant proposes to record the facilities upon its books; the amount of the original cost to be recorded, the depreciation, depletion, and amortization reserves; and the acquisition adjustments, if any, together with applicant's proposed disposition of all adjustments.

(6) Duplicate facilities to be acquired and retired, property which must be extensively rehabilitated, including a clear description of such property, the additional costs to be incurred, and the accounting therefor proposed.

(7) A balance sheet of the company to be acquired as of the most recent date available, if the acquisition involved is by purchase of capital stock and liquidation of the acquired company.

(8) A pro forma consolidating balance sheet, as of the date of the merger if the acquisition is by merger, showing the merging of the accounts and the adjustments relating thereto.

[17 FR 7389, Aug. 14, 1952, as amended by Order 493, 53 FR 15029, Apr. 27, 1988; Order 603, 64 FR 26605, May 14, 1999; Order 643, 68 FR 52096, Sept. 2, 2003]

§ 157.17 Applications for temporary certificates in cases of emergency.

In cases of emergency and pending the determination of any application on file with the Commission for a cer-

tificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act, application may be made for a temporary certificate authorizing the construction and operation of extensions of existing facilities, interconnections of pipeline systems, or sales of natural gas that may be required to assure maintenance of adequate service, or to service particular customers. This application must be submitted in the manner prescribed in §§ 157.6(a) and 385.2011 of this chapter.

(a) Whenever the waiver provisions of § 385.2011 of this chapter apply, the application must be submitted in writing, must be subscribed and verified by a responsible officer of applicant having knowledge of the facts, and must state clearly and specifically the exact character of the emergency, the proposed method of meeting it, and the facts claimed to warrant issuance of a temporary certificate.

(b) The application must be submitted on electronic media as prescribed in § 385.2011 of this chapter, must be subscribed and verified by a responsible officer of applicant having knowledge of the facts, and must state clearly and specifically the exact character of the emergency, the proposed method of meeting it, and the facts claimed to warrant issuance of a temporary certificate.

[Order 493, 53 FR 15029, Apr. 27, 1988, as amended by Order 493-B, 53 FR 49653, Dec. 9, 1988; Order 603, 64 FR 26606, May 14, 1999]

§ 157.18 Applications to abandon facilities or service; exhibits.

Applications for an order authorizing abandonment of facilities or service pursuant to section 7(b) of the Natural Gas Act must contain a statement providing in detail the reasons for the abandonment and must contain the exhibits listed below, unless the applicant includes a statement identifying the schedule and rate containing the required information and data filed as prescribed in § 385.2011 of this chapter. Any application for an abandonment that is not excluded by § 380.4(a)(28) or

(29), must include an environmental report as specified by § 380.3(c)(2). Sections 157.6(a) and 385.2011 of this chapter will govern the submission of applications and exhibits required to be furnished. Together with each exhibit, applicant must provide a full and complete explanation of the data submitted, the manner in which it was obtained, and the reasons for the conclusions derived from the data. The Secretary may, in addition, require that the testimony of all witnesses to be presented by the applicant be filed together with all exhibits upon which applicant will base its case-in-chief.

(a) *Exhibit T—Related applications.* A statement showing:

(1) The docket numbers of the prior proceedings in which the facilities or services sought to be abandoned were certificated.

(2) The docket numbers of related applications pending before or which have been authorized by the Commission with an explanation of the interrelationship of those applications with the instant application.

(b) *Exhibit U—Contracts and other agreements.* A conformed copy of each contract or other agreement pertaining directly or indirectly to the abandonment of facilities or service, including all agreements which influenced applicant to seek the abandonment and all agreements which are dependent upon the approval of the proposed abandonment.

(c) *Exhibit V—Flow diagram showing daily design capacity and reflecting operation of applicant's system after abandonment.* A flow diagram showing daily design capacity and reflecting operating conditions of applicant's system after abandonment of facilities on that segment of the system affected by the abandonment, including the following:

(1) Diameter, wall thickness, and length of pipe remaining.

(2) For each remaining compressor station, the size, type and number of compressor units, horsepower required, horsepower installed, volume of gas to be used as fuel, suction and discharge pressures, and compression ratio.

(3) Pressures and volumes of gas at the main line inlet and outlet connections at each compressor station.

(4) Pressures and volumes of gas at each intake and takeoff point and at the beginning and terminus of all remaining facilities.

(d) *Exhibit W—Impact on customers whose service will be terminated.* A statement indicating the availability of natural gas from other sources to applicant's customers whose service will be terminated by the abandonment and a statement showing the economic effect of the abandonment on applicant's customers. If no other natural gas is available, indicate the availability of other fuels to those customers and explain why the abandonment of service to each customer is permitted by the public convenience and necessity.

(e) *Exhibit X—Effect of the abandonment on existing tariffs.* A statement showing the effect of the proposed abandonment upon any rate schedules or tariffs on file with this Commission, together with pro forma rate schedule sheets, notices of cancellation, or other tariff filings required to be made with this Commission.

(f) *Exhibit Y—Accounting treatment of abandonment.* Concisely describe the changes of property, indicating the cost of property to be abandoned in place, the cost of property to be removed and salvaged, the proposed disposition of salvaged material, and a description of equipment to be relocated setting forth its cost, its proposed new location, and the extent of rehabilitation required. Include the information required below.

(1) State the proposed accounting treatment for property changes, showing, for example, retirements by primary plant accounts, cost of removal, salvage realized for materials and equipment sold, original cost of reusable materials and equipment recovered (see Account 154 of the Uniform System of Accounts), and maintenance costs for reconditioning of reusable materials and equipment.

(2) If the abandonment will be by sale of property, describe the property to be sold, together with the proposed accounting treatment as required by paragraph F of Gas Plant Instruction 5 of the Uniform System of Accounts. Include a brief statement explaining the basis or methods used to derive the accumulated depreciation related to the

property to be disposed of. Applicant may use pro forma accounting entries based on estimated amounts, provided that upon consummation of the sale he must file proposed accounting entries in conformity with the requirements of the Uniform System of Accounts. If the proposed sale will result in a taxable gain to the applicant, indicate the amount of federal and state income taxes to be allocated to the gain. If no allocation is to be made, explain the reasons.

(3) State the amount of accumulated deferred income taxes attributable to the property to be abandoned and the tax basis of the property. Indicate the proposed accounting treatment of those accumulated deferred taxes.

(g) *Exhibit Z—Location of facilities.* Unless shown on Exhibit V or elsewhere, a geographic map of suitable scale and detail showing, and appropriately differentiating between, all of the facilities proposed to be abandoned and the other existing facilities of applicant, the operation or capacity of which will be directly affected by the facilities to be abandoned. This map shall clearly show the relationship of the facilities to be abandoned to the applicant's overall system and shall include:

(1) Location, length and size of pipelines.

(2) Location and size (rated horsepower) of compressor stations.

(3) Location and designation of each point of connection of existing facilities with (i) main line industrial and other consumers, pipeline or distribution companies and municipalities, indicating towns and communities served at wholesale or retail and (ii) gas-producing and storage fields, or other sources of gas supply. Designate on the map those facilities and services proposed to be abandoned.

[Order 280, 29 FR 4879, Apr. 7, 1964, as amended by Order 295, 30 FR 4130, Mar. 30, 1965; Order 493, 53 FR 15029, Apr. 27, 1988; Order 603, 64 FR 26606, May 14, 1999]

§ 157.20 General conditions applicable to certificates.

Such of the following terms and conditions, among others, as the Commission shall find is required by the public convenience and necessity, shall attach

to the issuance of each certificate and to the exercise of the rights granted thereunder.

(a) The certificate shall be void and without force or effect unless accepted in writing by applicant within 30 days from the issue date of the order issuing such certificate: *Provided, however,* That when an application for rehearing of such order is filed in accordance with section 19 of the Natural Gas Act, such acceptance shall be filed within 30 days from the issue date of the order of the Commission upon the application for rehearing or within 30 days from the date on which such application may be deemed to have been denied when the Commission has not acted on such application within 30 days after it has been filed: *Provided further,* That when a petition for review is filed in accordance with the provisions of section 19 of the Natural Gas Act, such acceptance shall be filed within 30 days after final disposition of the judicial review proceedings thus initiated.

(b) Any authorized construction, extension, or acquisition shall be completed and made available for service by applicant and any authorized operation, service, or sale shall be available for regular performance by applicant within (period of time to be specified by the Commission in each order) from the issue date of the Commission's order issuing the certificate. Applicant shall notify the Commission in writing no later than 10 days after expiration of this time period that the end-user/shipper is unable to meet the imposed timetable to commence service.

(c) Applicant must file with the Commission, in writing and under oath, an original and four conformed copies, as prescribed in §385.2011 of this chapter and, upon request must furnish an intervener with a single copy, of the following:

(1) Within ten days after the bona fide beginning of construction, notice of the date of such beginning;

(2) Within ten days after authorized facilities have been constructed and placed in service or any authorized operation, sale, or service has commenced, notice of the date of such placement and commencement and

(3) Within six months after authorized facilities have been constructed, a

statement showing, on the basis of all costs incurred to that date and estimated to be incurred for final completion of the project, the cost of constructing authorized facilities, such total costs to be classified according to the estimates submitted in the certificate proceeding and compared therewith and any significant differences explained.

(d) With respect to an acquisition authorized by the certificate, applicant must file with the Commission, in writing and under oath, an original and four conformed copies as prescribed in §385.2011 of this chapter the following:

(1) Within 10 days after acquisition and the beginning of authorized operations, notice of the dates of acquisition and the beginning of operations; and

(2) Within 10 days after authorized facilities have been constructed and within 10 days after such facilities have been placed in service or any authorized operation, sale, or service has commenced, notice of the date of such completion, placement, and commencement, and

(e) The certificate issued to applicant is not transferable in any manner and shall be effective only so long as applicant continues the operations authorized by the order issuing such certificate and in accordance with the provisions of the Natural Gas Act, as well as applicable rules, regulations, and orders of the Commission.

(f) In the interest of safety and reliability of service, facilities authorized by the certificate shall not be operated at pressures exceeding the maximum operating pressure set forth in Exhibit G-II to the application as it may be amended prior to issuance of the certificate. In the event the applicant thereafter wishes to change such maximum operating pressure it shall file an appropriate petition for amendment of the certificate. Such petition shall include the reasons for the proposed change. Nothing contained herein authorizes a natural gas company to operate any facility at a pressure above the maximum prescribed by state law,

if such law requires a lower pressure than authorized hereby.

(Sec. 20, 52 Stat. 832; 15 U.S.C. 717s)

[17 FR 7389, Aug. 14, 1952, as amended by Order 280, 29 FR 4879, Apr. 7, 1964; Order 317, 31 FR 432, Jan. 13, 1966; Order 324, 31 FR 9348, July 8, 1966; Order 493, 53 FR 15030, Apr. 27, 1988; Order 493-B, 53 FR 49653, Dec. 9, 1988; Order 603, 64 FR 26606, May 14, 1999]

§ 157.21 Pre-filing procedures and review process for LNG terminal facilities and other natural gas facilities prior to filing of applications.

(a) *LNG terminal facilities and related jurisdictional natural gas facilities.* A prospective applicant for authorization to site, construct and operate facilities included within the definition of “LNG terminal,” as defined in §153.2(d), and any prospective applicant for related jurisdictional natural gas facilities must comply with this section’s pre-filing procedures and review process. These mandatory pre-filing procedures also shall apply when the Director finds in accordance with paragraph (e)(2) of this section that prospective modifications to an existing LNG terminal are modifications that involve significant state and local safety considerations that have not been previously addressed. Examples of such modifications include, but are not limited to, the addition of LNG storage tanks; increasing throughput requiring additional tanker arrivals or the use of larger vessels; or changing the purpose of the facility from peaking to base load. When a prospective applicant is required by this paragraph to comply with this section’s pre-filing procedures:

(1) The prospective applicant must make a filing containing the material identified in paragraph (d) of this section and concurrently file a Letter of Intent pursuant to 33 CFR 127.007, and a Preliminary Waterway Suitability Assessment (WSA) with the U.S. Coast Guard (Captain of the Port/Federal Maritime Security Coordinator). The latest information concerning the documents to be filed with the Coast Guard should be requested from the U.S. Coast Guard. For modifications to an existing or approved LNG terminal, this requirement can be satisfied by the prospective applicant’s certifying

that the U.S. Coast Guard did not require such information.

(2) An application:

(i) Shall not be filed until at least 180 days after the date that the Director issues notice pursuant to paragraph (e) of this section of the commencement of the prospective applicant's pre-filing process; and

(ii) Shall contain all the information specified by the Commission staff after reviewing the draft materials filed by the prospective applicant during the pre-filing process, including required environmental material in accordance with the provisions of part 380 of this chapter, "Regulations Implementing the National Environmental Policy Act."

(3) The prospective applicant must provide sufficient information for the pre-filing review of any pipeline or other natural gas facilities, including facilities not subject to the Commission's Natural Gas Act jurisdiction, which are necessary to transport regassified LNG from the subject LNG terminal facilities to the existing natural gas pipeline infrastructure.

(b) *Other natural gas facilities.* When a prospective applicant for authorization for natural gas facilities is not required by paragraph (a) of this section to comply with this section's pre-filing procedures, the prospective applicant may file a request seeking approval to use the pre-filing procedures.

(1) A request to use the pre-filing procedures must contain the material identified in paragraph (d) of this section unless otherwise specified by the Director as a result of the Initial Consultation required pursuant to paragraph (c) of this subsection; and

(2) If a prospective applicant for non-LNG terminal facilities is approved to use this section's pre-filing procedures:

(i) The application will normally not be filed until at least 180 days after the date that the Director issues notice pursuant to paragraph (e)(3) of this section approving the prospective applicant's request to use the pre-filing procedures under this section and commencing the prospective applicant's pre-filing process. However, a prospective applicant approved by the Director pursuant to paragraph (e)(3) of this section to undertake the pre-filing process

is not prohibited from filing an application at an earlier date, if necessary; and

(ii) The application shall contain all the information specified by the Commission staff after reviewing the draft materials filed by the prospective applicant during the pre-filing process, including required environmental material in accordance with the provisions of part 380 of this chapter, "Regulations Implementing the National Environmental Policy Act."

(c) *Initial consultation.* A prospective applicant required or potentially required or requesting to use the pre-filing process must first consult with the Director on the nature of the project, the content of the pre-filing request, and the status of the prospective applicant's progress toward obtaining the information required for the pre-filing request described in paragraph (d) of this section. This consultation will also include discussion of the specifications for the applicant's solicitation for prospective third-party contractors to prepare the environmental documentation for the project, and whether a third-party contractor is likely to be needed for the project.

(d) *Contents of the initial filing.* A prospective applicant's initial filing pursuant to paragraph (a)(1) of the section for LNG terminal facilities and related jurisdictional natural gas facilities or paragraph (b)(1) of this section for other natural gas facilities shall include the following information:

(1) A description of the schedule desired for the project including the expected application filing date and the desired date for Commission approval.

(2) For LNG terminal facilities, a description of the zoning and availability of the proposed site and marine facility location.

(3) For natural gas facilities other than LNG terminal facilities and related jurisdictional natural gas facilities, an explanation of why the prospective applicant is requesting to use the pre-filing process under this section.

(4) A detailed description of the project, including location maps and plot plans to scale showing all major plant components, that will serve as

the initial discussion point for stakeholder review.

(5) A list of the relevant federal and state agencies in the project area with permitting requirements. For LNG terminal facilities, the list shall identify the agency designated by the governor of the state in which the project will be located to consult with the Commission regarding state and local safety considerations. The filing shall include a statement indicating:

(i) That those agencies are aware of the prospective applicant's intention to use the pre-filing process (including contact names and telephone numbers);

(ii) Whether the agencies have agreed to participate in the process;

(iii) How the applicant has accounted for agency schedules for issuance of federal authorizations; and

(iv) When the applicant proposes to file with these agencies for their respective permits or other authorizations.

(6) A list and description of the interest of other persons and organizations who have been contacted about the project (including contact names and telephone numbers).

(7) A description of what work has already been done, *e.g.*, contacting stakeholders, agency consultations, project engineering, route planning, environmental and engineering contractor engagement, environmental surveys/studies, and open houses. This description shall also include the identification of the environmental and engineering firms and sub-contractors under contract to develop the project.

(8) For LNG terminal projects, proposals for at least three prospective third-party contractors from which Commission staff may make a selection to assist in the preparation of the requisite NEPA document.

(9) For natural gas facilities other than LNG terminal facilities and related jurisdictional natural gas facilities, proposals for at least three prospective third-party contractors from which Commission staff may make a selection to assist in the preparation of the requisite NEPA document, or a proposal for the submission of an applicant-prepared draft Environmental Assessment as determined during the ini-

tial consultation described in paragraph (c) of this section.

(10) Acknowledgement that a complete Environmental Report and complete application are required at the time of filing.

(11) A description of a Public Participation Plan which identifies specific tools and actions to facilitate stakeholder communications and public information, including a project website and a single point of contact. This plan shall also describe how the applicant intends to respond to requests for information from federal and state permitting agencies, including, if applicable, the governor's designated agency for consultation regarding state and local safety considerations with respect to LNG facilities.

(12) Certification that a Letter of Intent and a Preliminary WSA have been submitted to the U.S. Coast Guard or, for modifications to an existing or approved LNG terminal, that the U.S. Coast Guard did not require such information.

(e) *Director's notices.* (1) When the Director finds that a prospective applicant for authority to site and construct a new LNG terminal has adequately addressed the requirements of paragraphs (a), (c) and (d) of this section, the Director shall issue a notice of such finding. Such notice shall designate the third-party contractor. The pre-filing process shall be deemed to have commenced on the date of the Director's notice, and the date of such notice shall be used in determining whether the date an application is filed is at least 180 days after commencement of the pre-filing process.

(2) When the Director finds that a prospective applicant for authority to make modifications to an existing or approved LNG terminal has adequately addressed the requirements of paragraphs (a), (c) and (d) of this section, the Director shall issue a notice making a determination whether prospective modifications to an existing LNG terminal shall be subject to this section's pre-filing procedures and review process. Such notice shall designate the third-party contractor, if appropriate. If the Director determines that the prospective modifications are significant modifications that involve

state and local safety considerations, the Director's notice will state that the pre-filing procedures shall apply, and the pre-filing process shall be deemed to have commenced on the date of the Director's notice in determining whether the date an application is filed is at least 180 days after commencement of the pre-filing process.

(3) When a prospective applicant requests to use this section's pre-filing procedures and review for facilities not potentially subject to this section's mandatory requirements, the Director shall issue a notice approving or disapproving use of the pre-filing procedures of this section and determining whether the prospective applicant has adequately addressed the requirements of paragraphs (b), (c) and (d) of this section. Such notice shall designate the third-party contractor, if appropriate. The pre-filing process shall be deemed to have commenced on the date of the Director's notice, and the date of such notice shall be used in determining whether the date an application is filed is at least 180 days after commencement of the pre-filing process.

(f) Upon the Director's issuance of a notice commencing a prospective applicant's pre-filing process, the prospective applicant must:

(1) Within seven days and after consultation with Commission staff, establish the dates and locations at which the prospective applicant will conduct open houses and meetings with stakeholders (including agencies) and Commission staff.

(2) Within 14 days, conclude the contract with the selected third-party contractor.

(3) Within 14 days, contact all stakeholders not already informed about the project, including all affected landowners as defined in paragraph §157.6(d)(2) of this section.

(4) Within 30 days, submit a stakeholder mailing list to Commission staff.

(5) Within 30 days, file a draft of Resource Report 1, in accordance with §380.12(c), and a summary of the alternatives considered or under consideration.

(6) On a monthly basis, file status reports detailing the applicant's project activities including surveys, stake-

holder communications, and agency meetings.

(7) Be prepared to provide a description of the proposed project and to answer questions from the public at the scoping meetings held by OEP staff.

(8) Be prepared to attend site visits and other stakeholder and agency meetings arranged by the Commission staff, as required.

(9) Within 14 days of the end of the scoping comment period, respond to issues raised during scoping.

(10) Within 60 days of the end of the scoping comment period, file draft Resource Reports 1 through 12.

(11) At least 60 days prior to filing an application, file revised draft Resource Reports 1 through 12, if requested by Commission staff.

(12) At least 90 days prior to filing an application, file draft Resource Report 13 (for LNG terminal facilities).

(13) Certify that a Follow-on WSA will be submitted to the U.S. Coast Guard no later than the filing of an application with the Commission (for LNG terminal facilities and modifications thereto, if appropriate). The applicant shall certify that the U.S. Coast Guard has indicated that a Follow-On WSA is not required, if appropriate.

(g) Commission staff and third-party contractor involvement during the pre-filing process will be designed to fit each project and will include some or all of the following:

(1) Assisting the prospective applicant in developing initial information about the proposal and identifying affected parties (including landowners, agencies, and other interested parties).

(2) Issuing an environmental scoping notice and conducting such scoping for the proposal.

(3) Facilitating issue identification and resolution.

(4) Conducting site visits, examining alternatives, meeting with agencies and stakeholders, and participating in the prospective applicant's public information meetings.

(5) Reviewing draft Resource Reports.

(6) Initiating the preparation of a preliminary Environmental Assessment or Draft Environmental Impact Statement, the preparation of which

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may involve cooperating agency review.

(h) A prospective applicant using the pre-filing procedures of this section shall comply with the procedures in §388.112 for the submission of documents containing critical energy infrastructure information, as defined in §388.113.

[Order 665, 70 FR 60440, Oct. 18, 2005, as amended by Order 756, 77 FR 4894, Feb. 1, 2012]

§ 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.

[Order 687, 71 FR 62921, Oct. 27, 2006]

Subpart B—Open Seasons for Alaska Natural Gas Transportation Projects

SOURCE: Order 2005, 70 FR 8286, Feb. 18, 2005, unless otherwise noted.

§ 157.30 Purpose.

This subpart establishes the procedures for conducting open seasons for the purpose of making binding commitments for the acquisition of initial or voluntary expansion capacity on Alaska natural gas transportation projects, as defined herein.

§ 157.31 Definitions.

(a) “Alaska natural gas transportation project” means any natural gas pipeline system that carries Alaska natural gas to the international border between Alaska and Canada (including related facilities subject to the jurisdiction of the Commission) that is authorized under the Alaska Natural Gas Transportation Act of 1976 or section

103 of the Alaska Natural Gas Pipeline Act.

(b) “Commission” means the Federal Energy Regulatory Commission.

(c) “Voluntary expansion” means any expansion in capacity of an Alaska natural gas transportation project above the initial certificated capacity, including any increase in mainline capacity, any extension of mainline pipeline facilities, and any lateral pipeline facilities beyond those certificated in the initial certificate order, voluntarily made by the pipeline. An expansion done pursuant to section 105 of the Alaska Natural Gas Pipeline Act is not a voluntary expansion.

§ 157.32 Applicability.

These regulations shall apply to any application to the Commission for a certificate of public convenience and necessity or other authorization for an Alaska natural gas transportation project, whether filed pursuant to the Natural Gas Act, the Alaska Natural Gas Transportation Act of 1976, or the Alaska Natural Gas Pipeline Act, and to applications for expansion of such projects. Absent a Commission order to the contrary, these regulations are not applicable in the case of an expansion ordered by the Commission pursuant to section 105 of the Alaska Natural Gas Pipeline Act.

§ 157.33 Requirement for open season.

(a) Any application for a certificate of public convenience and necessity or other authorization for a proposed Alaska natural gas transportation project must include a demonstration that the applicant has conducted an open season for capacity on its proposed project, in accordance with the requirements of this subpart. Failure to provide the requisite demonstration will result in an application being rejected as incomplete.

(b) Initial capacity on a proposed Alaska natural gas transportation project may be acquired prior to an open season through pre-subscription agreements, provided that in any open season as required in paragraph (a) of this section, capacity is offered to all prospective bidders at the same rates and on the same terms and conditions as contained in the pre-subscription

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§ 1501.2 Apply NEPA early in the process.

Agencies shall integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts. Each agency shall:

(a) Comply with the mandate of section 102(2)(A) to “utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man’s environment,” as specified by §1507.2.

(b) Identify environmental effects and values in adequate detail so they can be compared to economic and technical analyses. Environmental documents and appropriate analyses shall be circulated and reviewed at the same time as other planning documents.

(c) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources as provided by section 102(2)(E) of the Act.

(d) Provide for cases where actions are planned by private applicants or other non-Federal entities before Federal involvement so that:

(1) Policies or designated staff are available to advise potential applicants of studies or other information foreseeably required for later Federal action.

(2) The Federal agency consults early with appropriate State and local agencies and Indian tribes and with interested private persons and organizations when its own involvement is reasonably foreseeable.

(3) The Federal agency commences its NEPA process at the earliest possible time.

§ 1501.3 When to prepare an environmental assessment.

(a) Agencies shall prepare an environmental assessment (§1508.9) when necessary under the procedures adopted by individual agencies to supplement these regulations as described in §1507.3. An assessment is not necessary

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if the agency has decided to prepare an environmental impact statement.

(b) Agencies may prepare an environmental assessment on any action at any time in order to assist agency planning and decisionmaking.

§ 1501.4 Whether to prepare an environmental impact statement.

In determining whether to prepare an environmental impact statement the Federal agency shall:

(a) Determine under its procedures supplementing these regulations (described in §1507.3) whether the proposal is one which:

(1) Normally requires an environmental impact statement, or

(2) Normally does not require either an environmental impact statement or an environmental assessment (categorical exclusion).

(b) If the proposed action is not covered by paragraph (a) of this section, prepare an environmental assessment (§1508.9). The agency shall involve environmental agencies, applicants, and the public, to the extent practicable, in preparing assessments required by §1508.9(a)(1).

(c) Based on the environmental assessment make its determination whether to prepare an environmental impact statement.

(d) Commence the scoping process (§1501.7), if the agency will prepare an environmental impact statement.

(e) Prepare a finding of no significant impact (§1508.13), if the agency determines on the basis of the environmental assessment not to prepare a statement.

(1) The agency shall make the finding of no significant impact available to the affected public as specified in §1506.6.

(2) In certain limited circumstances, which the agency may cover in its procedures under §1507.3, the agency shall make the finding of no significant impact available for public review (including State and areawide clearinghouses) for 30 days before the agency makes its final determination whether to prepare an environmental impact statement and before the action may begin. The circumstances are:

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(i) The proposed action is, or is closely similar to, one which normally requires the preparation of an environmental impact statement under the procedures adopted by the agency pursuant to §1507.3, or

(ii) The nature of the proposed action is one without precedent.

§ 1501.5 Lead agencies.

(a) A lead agency shall supervise the preparation of an environmental impact statement if more than one Federal agency either:

(1) Proposes or is involved in the same action; or

(2) Is involved in a group of actions directly related to each other because of their functional interdependence or geographical proximity.

(b) Federal, State, or local agencies, including at least one Federal agency, may act as joint lead agencies to prepare an environmental impact statement (§ 1506.2).

(c) If an action falls within the provisions of paragraph (a) of this section the potential lead agencies shall determine by letter or memorandum which agency shall be the lead agency and which shall be cooperating agencies. The agencies shall resolve the lead agency question so as not to cause delay. If there is disagreement among the agencies, the following factors (which are listed in order of descending importance) shall determine lead agency designation:

(1) Magnitude of agency's involvement.

(2) Project approval/disapproval authority.

(3) Expertise concerning the action's environmental effects.

(4) Duration of agency's involvement.

(5) Sequence of agency's involvement.

(d) Any Federal agency, or any State or local agency or private person substantially affected by the absence of lead agency designation, may make a written request to the potential lead agencies that a lead agency be designated.

(e) If Federal agencies are unable to agree on which agency will be the lead agency or if the procedure described in paragraph (c) of this section has not resulted within 45 days in a lead agency

designation, any of the agencies or persons concerned may file a request with the Council asking it to determine which Federal agency shall be the lead agency.

A copy of the request shall be transmitted to each potential lead agency. The request shall consist of:

(1) A precise description of the nature and extent of the proposed action.

(2) A detailed statement of why each potential lead agency should or should not be the lead agency under the criteria specified in paragraph (c) of this section.

(f) A response may be filed by any potential lead agency concerned within 20 days after a request is filed with the Council. The Council shall determine as soon as possible but not later than 20 days after receiving the request and all responses to it which Federal agency shall be the lead agency and which other Federal agencies shall be cooperating agencies.

[43 FR 55992, Nov. 29, 1978; 44 FR 873, Jan. 3, 1979]

§ 1501.6 Cooperating agencies.

The purpose of this section is to emphasize agency cooperation early in the NEPA process. Upon request of the lead agency, any other Federal agency which has jurisdiction by law shall be a cooperating agency. In addition any other Federal agency which has special expertise with respect to any environmental issue, which should be addressed in the statement may be a cooperating agency upon request of the lead agency. An agency may request the lead agency to designate it a cooperating agency.

(a) The lead agency shall:

(1) Request the participation of each cooperating agency in the NEPA process at the earliest possible time.

(2) Use the environmental analysis and proposals of cooperating agencies with jurisdiction by law or special expertise, to the maximum extent possible consistent with its responsibility as lead agency.

(3) Meet with a cooperating agency at the latter's request.

(b) Each cooperating agency shall:

(1) Participate in the NEPA process at the earliest possible time.

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§ 1508.6 Council.

Council means the Council on Environmental Quality established by title II of the Act.

§ 1508.7 Cumulative impact.

Cumulative impact is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

§ 1508.8 Effects.

Effects include:

(a) Direct effects, which are caused by the action and occur at the same time and place.

(b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

Effects and impacts as used in these regulations are synonymous. Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

§ 1508.9 Environmental assessment.

Environmental assessment:

(a) Means a concise public document for which a Federal agency is responsible that serves to:

(1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact

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statement or a finding of no significant impact.

(2) Aid an agency's compliance with the Act when no environmental impact statement is necessary.

(3) Facilitate preparation of a statement when one is necessary.

(b) Shall include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

§ 1508.10 Environmental document.

Environmental document includes the documents specified in § 1508.9 (environmental assessment), § 1508.11 (environmental impact statement), § 1508.13 (finding of no significant impact), and § 1508.22 (notice of intent).

§ 1508.11 Environmental impact statement.

Environmental impact statement means a detailed written statement as required by section 102(2)(C) of the Act.

§ 1508.12 Federal agency.

Federal agency means all agencies of the Federal Government. It does not mean the Congress, the Judiciary, or the President, including the performance of staff functions for the President in his Executive Office. It also includes for purposes of these regulations States and units of general local government and Indian tribes assuming NEPA responsibilities under section 104(h) of the Housing and Community Development Act of 1974.

§ 1508.13 Finding of no significant impact.

Finding of no significant impact means a document by a Federal agency briefly presenting the reasons why an action, not otherwise excluded (§ 1508.4), will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it (§ 1501.7(a)(5)). If the assessment is included, the finding need not

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repeat any of the discussion in the assessment but may incorporate it by reference.

§ 1508.14 Human environment.

Human environment shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. (See the definition of "effects" (§1508.8).) This means that economic or social effects are not intended by themselves to require preparation of an environmental impact statement. When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.

§ 1508.15 Jurisdiction by law.

Jurisdiction by law means agency authority to approve, veto, or finance all or part of the proposal.

§ 1508.16 Lead agency.

Lead agency means the agency or agencies preparing or having taken primary responsibility for preparing the environmental impact statement.

§ 1508.17 Legislation.

Legislation includes a bill or legislative proposal to Congress developed by or with the significant cooperation and support of a Federal agency, but does not include requests for appropriations. The test for significant cooperation is whether the proposal is in fact predominantly that of the agency rather than another source. Drafting does not by itself constitute significant cooperation. Proposals for legislation include requests for ratification of treaties. Only the agency which has primary responsibility for the subject matter involved will prepare a legislative environmental impact statement.

§ 1508.18 Major Federal action.

Major Federal action includes actions with effects that may be major and which are potentially subject to Federal control and responsibility. Major reinforces but does not have a meaning independent of significantly (§1508.27). Actions include the circumstance

where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as agency action.

(a) Actions include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals (§§1506.8, 1508.17). Actions do not include funding assistance solely in the form of general revenue sharing funds, distributed under the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. 1221 *et seq.*, with no Federal agency control over the subsequent use of such funds. Actions do not include bringing judicial or administrative civil or criminal enforcement actions.

(b) Federal actions tend to fall within one of the following categories:

(1) Adoption of official policy, such as rules, regulations, and interpretations adopted pursuant to the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*; treaties and international conventions or agreements; formal documents establishing an agency's policies which will result in or substantially alter agency programs.

(2) Adoption of formal plans, such as official documents prepared or approved by federal agencies which guide or prescribe alternative uses of Federal resources, upon which future agency actions will be based.

(3) Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive.

(4) Approval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as federal and federally assisted activities.

§ 1508.19 Matter.

Matter includes for purposes of part 1504:

CERTIFICATE OF SERVICE

In accordance with Fed. R. App. P. 25(d), and the Court’s Administrative Order Regarding Electronic Case Filing, I hereby certify that I have, this 24th day of November 2014, served the foregoing upon the counsel listed in the Service Preference Report via email through the Court’s CM/ECF system, as indicated below:

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