

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Parts 153, 157, 375, and 385

Docket No. RM06-1-000

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

(Issued May 18, 2006)

AGENCY: Federal Energy Regulatory Commission

ACTION: Notice of Proposed Rulemaking

SUMMARY: Section 313 of the Energy Policy Act of 2005 (EPAAct 2005)<sup>1</sup> amends section 15 of the Natural Gas Act (NGA)<sup>2</sup> to provide the Federal Energy Regulatory Commission (Commission) with additional authority to coordinate the processing of authorizations required under federal law for proposed natural gas projects subject to NGA sections 3 and 7 and maintain a complete consolidated record of decisions with respect to such federal authorizations. The Commission proposes to promulgate regulations governing its exercise of this authority, and seeks public comments on the proposed regulations.

DATE: Comments must be filed on or before **[insert date 60 days after publication in the Federal Register]**.

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<sup>1</sup> Pub. L. No. 109-58, 119 Stat. 594 (2005).

<sup>2</sup> 15 U.S.C. § 717n (2000).

ADDRESSES: You may submit comments, identified by Docket No. RM06-1-000, by one of the following methods:

- Agency Web Site: <http://www.ferc.gov>. Follow the instructions for submitting comments via the eFiling link found in the Comment Procedures Section of the preamble. The Commission encourages electronic filing.
- Mail: Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, N.E., Washington, DC, 20426. Please refer to the Comments Procedures Section of the preamble for additional information on how to file paper comments.

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SUPPLEMENTARY INFORMATION:

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Nora Mead Brownell, and Suedeem G. Kelly.

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

Docket No. RM06-1-000

NOTICE OF PROPOSED RULEMAKING

(Issued May 18, 2006)

1. Section 313 of the Energy Policy Act of 2005 (EPAAct 2005)<sup>1</sup> amends section 15 of the Natural Gas Act (NGA)<sup>2</sup> to provide the Federal Energy Regulatory Commission (Commission) with additional authority to (1) coordinate the processing of authorizations required under federal law for proposed natural gas projects subject to NGA sections 3 and 7 and (2) maintain a complete consolidated record of decisions with respect to such federal authorizations. The Commission proposes to promulgate regulations governing its exercise of this authority and seeks public comments on the proposed regulations.

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<sup>1</sup> Pub. L. No. 109-58, 119 Stat. 594 (2005).

<sup>2</sup> 15 U.S.C. § 717n (2000).

**I. Background and Proposal**

2. The Commission authorizes the construction and operation of proposed natural gas projects under NGA sections 3 and 7.<sup>3</sup> However, the Commission does not have jurisdiction over every aspect of each natural gas project. Hence, for a natural gas project to go forward, in addition to Commission approval, several different agencies must typically reach favorable findings regarding other aspects of the project.

3. To better coordinate the activities of the separate agencies with varying responsibilities over proposed natural gas projects, EPOA 2005 modifies the Commission's role. Section 313 of EPOA 2005 directs the Commission (1) to establish a schedule for agencies to review requests for federal authorizations required for a project and (2) to compile a record of each agency's decision, together with the record of the Commission's decision, to serve as a consolidated record for the purpose of appeal or review, including judicial review. This notice of proposed rulemaking (NOPR) seeks comments on procedures to better coordinate the actions of the Commission and other agencies in responding to requests for federal authorizations necessary for natural gas

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<sup>3</sup> Under NGA section 7, the Commission has jurisdiction over the transportation or sale of natural gas in interstate commerce and the construction, acquisition, operation, and abandonment of facilities to transport natural gas in interstate commerce. Pursuant to Department of Energy (DOE) Delegation Order No. 00-004.00, 67 FR 8946 (February 27, 2002), the Secretary of Energy delegated to the Commission the authority under NGA section 3 to approve or disapprove applications for the construction and operation of facilities to import or export natural gas, including liquefied natural gas.

projects and on procedures by which the Commission proposes to maintain a complete consolidated record documenting agencies' responses to requests for federal authorizations.<sup>4</sup>

**A. Coordinating Federal Authorizations**

4. As modified by section 313(a) of EAct 2005, NGA section 15(b)(1) designates the Commission as “the lead agency for the purposes of coordinating all applicable Federal authorizations and for the purposes of complying with the National Environmental Policy Act of 1969” (NEPA).<sup>5</sup> The new NGA section 15(c)(1) directs the Commission to establish a schedule for issuance of all federal authorizations required for NGA section 3 and 7 natural gas project proposals. In setting a schedule, the Commission is directed both to “ensure expeditious completion” of NGA section 3 and 7 proceedings<sup>6</sup> and to “comply with applicable schedules established by Federal law.”<sup>7</sup>

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<sup>4</sup> EAct 2005 section 313 describes federal authorizations necessary for an NGA section 3 or 7 project as “all decisions made or actions taken by the Commission or by a Federal administrative agency or officer (or State administrative agency or officer acting under delegated Federal authority) with respect to” granting, denying, or conditioning requests for “permits, special use authorizations, certifications, opinions, or other approvals.” The proposed regulations reflect this description. However, the body of this NOPR generally condenses this description to “authorizations by agencies.”

<sup>5</sup> 42 U.S.C. 4321 *et seq.* (2000). Commission authorization under NGA section 3 or 7 often triggers NEPA, which aspires 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.” 42 U.S.C. § 4332(2)(A) (2000). EAct 2005 clarifies that the Commission will lead the collective, multi-agency NEPA compliance effort for natural gas projects subject to NGA section 3 or 7.

<sup>6</sup> NGA section 15(c)(1)(A).

<sup>7</sup> NGA section 15(c)(1)(B).

5. On November 17, 2005, the Commission issued an order initially implementing the authority conferred by EAct 2005.<sup>8</sup> In that order, the Commission delegated to the Director of the Office of Energy Projects (OEP) the authority to set schedules for agencies to act on requests for federal authorizations necessary for natural gas projects to ensure such requests are processed expeditiously. The Commission stated its intent to initiate a rulemaking to modify its regulations to formally incorporate the authority provided by EAct 2005 section 313. This NOPR is the start of that process.

6. This proposed rulemaking is aimed at expediting the assessment of NGA section 3 and 7 applications by better coordinating the review undertaken by the various agencies responsible for issuing necessary federal authorizations.<sup>9</sup> To the extent that the

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<sup>8</sup> Coordinated Processing of NGA Section 3 and 7 Proceedings, 113 FERC ¶ 61,170 (2005).

<sup>9</sup> In general, any proposal that will require Commission authorization under NGA section 3 or 7 will also require compliance with other federal requirements. Typically, these additional federal authorizations are considered in the context of the Commission's NEPA review. Federal authorizations for a natural gas project may require compliance with the Clean Water Act, 33 U.S.C. 1251 et seq. (2000), and the National Pollution Discharge Elimination System Program, 40 CFR Part 122 et seq. (2005); the Clean Air Act, 42 U.S.C. 1801 et seq. (2000), and the air quality regulations and state implementation plans adopted pursuant to 40 CFR Parts 50-99 (2005); the National Historic Preservation Act of 1966, 16 U.S.C. 470 et seq. (2000); the Archeological and Historic Preservation Act of 1974, 16 U.S.C. 469-469c (2000); the Coastal Zone Management Act of 1972, 16 U.S.C. 1451 et seq. (2000); the Endangered Species Act of 1973, 16 U.S.C. 1531 et seq. (2000); Executive Order No. 11,988, 42 FR 26,951 (May 24, 1977), requiring federal agencies to evaluate the potential effects of federal actions on a floodplain; Executive Order No. 11,990, 42 FR 26,961 (May 24, 1977), requiring an evaluation of the potential effects of construction on wetlands; the Wild and Scenic Rivers Act, 16 U.S.C. 1274 et seq. (2000); the National Wilderness Act, 16 U.S.C. 1133 et seq. (2000); the National Parks and Recreation Act of 1978, 16 U.S.C. 1 and 230 et seq. (2000); the Magnuson-Stevens Fishery Conservation and Management Act,  
(continued...)

Commission and the other agencies conduct their information collection and analysis concurrently – i.e., in tandem rather than sequentially – applications can be processed more efficiently. To this end, the Commission aims to have all agencies responsible for issuing federal authorizations necessary for natural gas projects initiate consideration of a requested authorization as early as practicable and reach timely final decisions.

7. The Commission aims to facilitate agencies' concurrent assessments of proposed natural gas projects by specifying that an NGA section 3 or 7 application submitted to the Commission will not be deemed ready for processing unless the project sponsor has submitted a request to each agency responsible for issuing a federal authorization required for the proposal. A project sponsor might fulfill this obligation by submitting requests for federal authorizations on the same day that an NGA section 3 or 7 application is submitted to the Commission. But this need not be the case. In practice, if a project sponsor anticipates that another agency's consideration of a request for a necessary federal authorization could extend beyond the time it will take the Commission to act, then the applicant may find it advantageous to submit a request to that agency in advance of filing an application with the Commission; otherwise, authorization to proceed on a project could be delayed pending a decision by the other agency. If, after filing its application with the Commission, an applicant makes material modifications to

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16 U.S.C. 1801 et seq. (2000); the Marine Mammal Protection Act of 1972, 16 U.S.C. 1361-1407 (2000); the Migratory Bird Treaty Act of 1918, 16 U.S.C. 703-712 (2000); the Rivers and Harbors Act of 1899, 33 U.S.C. 403 (2000); and Executive Order Nos. 10485, 18 FR 5397 (Sept. 3, 1953), and 12038, 43 FR 4957 (Feb. 7, 1978), which require a Presidential Permit for facilities at the border of the United States used to import or export natural gas.

any request for a federal authorization from another agency, the applicant should file an update with the Commission, describing its revised request.

8. To assist the Commission in its role as lead agency, the Commission proposes that each agency notify the Commission when it receives a request for a federal authorization, describe its anticipated processing procedure, and provide the Commission with a copy of any data requests sent to an applicant. When the Commission receives an NGA section 3 or 7 application, it will consider the information that the agencies submit in establishing a schedule for agency decisions on requests for authorizations necessary for a proposed natural gas project. If the Commission elects not to issue a notice specifying a schedule for a particular project proposal, then a default deadline of 90 days after the issuance of the Commission's final environmental document on the proposed project, or if no environmental document is issued, no later than 90 days after issuance of a final order, will apply to agencies without applicable schedules established by federal law.

9. If an agency finds it necessary to request additional information from an applicant, the Commission proposes the agency file a copy of its data request with the Commission. This will enhance the Commission's ability to assess the progress of agency proceedings and inform the Commission of issues raised in those proceedings.

**B. Consolidated Record**

10. Section 15(d) of the NGA, added by EPLA 2005, states:

The Commission shall, with the cooperation of Federal and State administrative agencies and officials, maintain a complete consolidated record of all decisions made or actions taken by the Commission or by a

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

As provided by EPO Act 2005, this consolidated record will serve as the record for (1) appeals or reviews under the Coastal Zone Management Act (CZMA)<sup>10</sup> and (2) judicial review under NGA section 19(d)<sup>11</sup> of decisions of federal and state administrative agencies and officials.<sup>12</sup>

11. On September 26, 2005, the Commission issued a policy statement to provide guidance in advance of the result of this rulemaking proceeding on the development of the consolidated record and the use of the record for appeals and reviews.<sup>13</sup> In this NOPR, the Commission proposes to fulfill its mandate to maintain a complete consolidated record by requiring that within three days of the effective date of an agency's final decision on a request for a federal authorization necessary for a proposed natural gas project, the agency must file with the Commission, by electronic means, a copy, or summary, of its decision and an index to documents and materials included in the agency's proceeding.<sup>14</sup> If an agency does not reach a decision by the deadline

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<sup>10</sup> 16 U.S.C. 1451 *et seq.* (2000). In an appeal proceeding, the record may be supplemented as provided by CZMA section 319.

<sup>11</sup> 15 U.S.C. § 717r (2000).

<sup>12</sup> If the consolidated record does not contain sufficient information, the United States Court of Appeals may remand the proceeding to the Commission for further development of the record. Section 19(d)(1)(2) of the NGA.

<sup>13</sup> Consolidated Record in Natural Gas Proceedings, 112 FERC ¶ 61,334 (2005).

<sup>14</sup> All such submissions are to be in accord with the Commission's regulations, Part 385, subpart T, Formal Requirements for Filings in Proceedings Before the  
(continued...)

established by the Commission or federal law, then within three days of the expiration of the time allotted, the agency must so inform the Commission and file an index to the documents and materials in the agency's inconclusive proceeding.

12. The Commission will maintain the complete consolidated record and it will be the record for appeal or review. In the event of an appeal or review of agency decisions in response to requests for federal authorizations necessary for a proposed natural gas project, the agency will file with the reviewing authority original, or certified copies of, documents and materials stipulated by the parties and specified by the reviewing agency. This comports with current practice with respect to the appeal of a Commission decision, whereby the Commission files with the United States Court of Appeals its record, or a portion thereof, as agreed upon by the parties and specified by the court.<sup>15</sup>

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Commission. The first page of the copy of, or summary of, the agency's decision, and the first page of the index, must include the designation "Consolidated Record" and the Commission's docket number for the proceeding in the upper right corner. In addition, § 388.112 of the Commission's regulations, 18 CFR 388.112 (2005), sets forth procedures to be followed for submissions to the Commission that contain critical energy infrastructure information (CEII) or other information for which protective treatment is requested. CEII, as defined by § 388.113(c) of the regulations, includes information about proposed or existing energy facilities that could be used in planning an attack on critical infrastructure. In compiling the consolidated record for a proceeding, the Commission will maintain a public record of public decisions and actions. To the extent the record of a decision or action by an agency or official contains CEII or other information for which protective treatment is appropriate, this information should be submitted to the Commission in accordance with the procedures described in § 388.112 to ensure the information is not placed in the Commission's public records.

<sup>15</sup> Just as the court need not review the entire record to rule on a specific issue on appeal of a Commission decision, the Commission does not expect the entire contents of the complete consolidated record will be needed for review on appeal of a single agency's decision.

## II. Proposed Regulatory Revisions

### A. Coordinating Federal Authorizations

13. The Commission proposes to modify §§ 153.8 and 157.14 of its regulations to specify that an applicant submitting an application for a natural gas project under NGA section 3 or 7 must first submit requests for federal authorizations necessary for its proposed project, and include an exhibit as part of its application that itemizes each required federal authorization, the agency responsible for issuing each authorization, the date a request for authorization was submitted to each agency, and the date by which the applicant has requested or expects each authorization be issued.<sup>16</sup> This threshold requirement should enhance the Commission's and agencies' capability to coordinate their consideration of a proposed natural gas project, and thereby avoid what might otherwise be piecemeal and disjointed assessments of jurisdictionally discrete aspects of a single project.

14. In addition to modifying §§ 153.8 and 157.14 of its regulations, the Commission proposes to amend § 375.308, Delegations to the Director of the Office of Energy Projects, by adding a new § 375.308(bb). This additional delegation of authority will

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<sup>16</sup> Specifically, for NGA section 3 projects, the Commission proposes to expand the exhibits required under § 153.8 of the regulations by adding a new § 153.8(a)(9), Exhibit H, containing the information described above, and for NGA section 7 projects, the Commission proposes to amend § 157.14 of the regulations by adding an identical requirement in a new § 157.14(a)(12), Exhibit J. An applicant that does not include this proposed new information statement risks rejection of its application as incomplete. In addition, if after filing its application with the Commission, an applicant makes material modifications to any request for a federal authorization from another agency, the applicant should file an update with the Commission, describing its revised request.

permit the Director of OEP to establish schedules, consistent with federal law, for agencies to complete their necessary analysis and decisionmaking processes and issue decisions on requests for authorizations for natural gas projects.

15. Finally, the Commission proposes to add a new § 153.4 to its regulations, to specify that certain Part 157 procedural regulations governing filing an application under NGA section 7 are equally applicable to applications under NGA section 3. Heretofore, applicants have either submitted NGA section 3 application for liquefied natural gas (LNG) projects in conjunction with NGA section 7 applications for interrelated facilities, or else adapted the Part 157 procedural filing requirements to submissions under NGA section 3. Hence, the Commission views this new section as clarifying and codifying current practice.

**B. Determining a Schedule for Federal Authorizations**

16. Initially, upon receiving an application, the Commission issues a notice “within 10 days of filing” pursuant to § 157.9 of its regulations.<sup>17</sup> The Commission proposes to clarify that the time to issue a notice runs for 10 business days.

17. In issuing a notice of an application, the Commission, or the Director of OEP acting pursuant to delegated authority, may issue a schedule for decisions on outstanding requests for federal authorizations. In the event the Commission or the Director of OEP does not set a schedule for a particular project, the default deadline for decisions by those

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<sup>17</sup> Alternatively, the Commission may reject the application in accordance with § 157.8 of its regulations.

agencies without applicable schedules established by federal law will be no later than 90 days after the issuance of the Commission's final environmental document on the proposed project, or if no environmental document is issued, no later than 90 days after issuance of a final order. In some cases – for example, when there is a demonstrated need to have a new natural gas project in service by a certain date – the Commission may set deadlines that are shorter than the maximum times permitted under federal law. In such cases, the Commission recognizes that compliance with its specified deadlines would be voluntary for agencies with deadlines determined by federal law.

18. In setting a schedule, the Commission will take the circumstances of other agencies into consideration. To this end, when an agency receives a request for a federal authorization, proposed new § 385.2013 specifies that within 30 days of receiving the request, the agency must inform the Commission, by electronic means, of the following: (1) whether the agency deems the application to be ready for processing and, if not, what additional information or materials will be necessary to assess the merits of the request; (2) the time the agency will allot the applicant to provide the necessary additional information or materials; (3) what, if any, studies will be necessary in order to evaluate the request; (4) the anticipated effective date of the agency's decision; and (5) if applicable, the schedule set forth by federal law for the agency to act. In order to assess the progress of proceedings on requests for federal authorizations, proposed new § 385.2013 requires that if an agency asks for additional information from an applicant

seeking a federal authorization, then, within three days of submitting its request to the applicant, the agency file a copy of its data request with the Commission.<sup>18</sup>

19. In calculating the time an agency has to act on a request, the Commission will measure time from the day a project sponsor submits a request to an agency. The Commission has previously had cause to consider when a federally specified time period starts to run with respect to a request for a water quality certification under section 401 of the Clean Water Act (CWA),<sup>19</sup> and has concluded that the time allotted by law starts to run on the day the agency receives the project sponsor's request.<sup>20</sup>

20. If an agency determines that an authorization request does not contain information adequate to permit it to reach a reasoned decision, the agency may deny the request, in

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<sup>18</sup> Submissions are to follow the regulatory procedures described in note 14.

<sup>19</sup> 33 U.S.C. § 1341 (2000).

<sup>20</sup> Section 4.34(b)(5)(iii) of the Commission's regulations states: "A certifying agency is deemed to have waived the certification requirements of section 401(a)(1) of the Clean Water Act if the certifying agency has not denied or granted certification by one year after the date the certifying agency received a written request for certification." In response to concerns that this manner of marking time might trigger the running of the one year time period by filing a deficient request, the Commission observed that if an agency finds a request to be incomplete – a determination the agency can be expected to make within, at most, several weeks of receipt of a request – the agency then has the discretion to deny the request on the grounds that it is incomplete. See Regulations Governing Submittal of Proposed Hydropower License Conditions and Other Matters, Order No. 533, FERC Statutes and Regulations ¶ 30,921 at 30,135-38, 56 FR 23, 108 (May 20, 1991), 55 FERC ¶ 61,193 (1991). We note, however, that federal regulations allow the United States Corps of Engineers, Department of the Army (Corps of Engineers) to wait to initiate its review of a request until after a project sponsor obtains certain separate federal authorizations, e.g., a CWA section 401 water certification (33 CFR 325.2(b)) or a coastal zone management consistency determination (33 CFR 325.2(2)(ii)). If the Corps of Engineers finds it necessary to forego its review of a request until another agency renders its decision, then the schedule established by federal law for the Corps of Engineers' review does not start to run until that other agency acts.

which case Commission authorization could be denied on the grounds that the project sponsor failed to obtain a federal authorization necessary for the proposed natural gas project to go forward. However, rather than risk rejection on the grounds an application is deficient, the Commission expects applicants to work to with agencies to cure deficiencies so that a request may be assessed on its merits. To this end, if at any time during the review process an agency believes that an applicant is being uncooperative or failing to respond to reasonable requests for additional information, the agency should promptly notify the Commission. The Commission intends to set deadlines to allow time to ensure that federal authorizations are issued, conditioned, or denied based on sufficient information and an agency's sound assessment thereof.

21. As indicated above, the Commission intends to adopt a default schedule to complete action on requests for federal authorizations necessary for a proposed natural gas project. The default deadline will be 90 days after issuance of the Commission's final environmental document in a given proceeding, or if an environmental document is not issued, then 90 days after issuance of the final Commission order. While it is desirable that all agencies act within the same time frame, the Commission cannot effect any change to a schedule established by federal law.

22. The Commission anticipates this default schedule will prove adequate for most projects. However, the Commission (or the Director of OEP acting under delegated authority) may find that circumstances warrant establishing an individualized schedule for a particular project. For example, when an applicant proposes a project that appears modest, routine, or unremarkable, the Commission may consider establishing an

accelerated schedule. It has been the Commission's experience that in the vast majority of natural gas cases, agencies act on requests for federal authorizations expeditiously. Thus, the Commission expects that in most cases, agencies will complete action on requests for federal authorizations within the time frame established by the Commission, even if a longer time is allotted to agencies by federal law.

23. EAct 2005, in addition to providing the scheduling authority discussed herein, mandates that project sponsors of certain LNG terminal projects commence a pre-filing process at least six months before submitting an application to the Commission.<sup>21</sup> The pre-filing process encourages early involvement by the public and government agencies, as contemplated by NEPA and the Council on Environmental Quality's regulations. Because the analysis of the potential environmental impacts of natural gas projects tends to take longer than reaching a determination on non-environmental issues (e.g., rates for new services), the Commission will start the environmental review of all natural gas projects as soon as doing so may prove productive. Accordingly, the Commission encourages all natural gas project sponsors to make use of the pre-filing process as a means to notify and consult with potentially interested persons, identify those aspects of a project that merit most attention, winnow the issues in play, and refine the final proposal prior to filing an application with the Commission.

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<sup>21</sup> See EAct 2005 section 311(d) and Regulations Implementing Energy Policy Act of 2005; Pre-Filing Procedures for Review of LNG Terminals and Other Natural Gas Facilities, Order No. 665, 113 FERC ¶ 61,015 (final rule) and 112 FERC ¶ 61,232 (2005) (NOPR).

24. This NOPR requires a project sponsor to submit requests for all necessary federal authorizations no later than the date that an application is filed with the Commission.

However, a project sponsor may submit a request sooner, and so trigger the start of the time provided by federal law for an agency to act. Gas project sponsors have previously made use of the prefiling process to prepare requests for federal authorizations, and have submitted such requests to agencies before filing an application with the Commission.<sup>22</sup>

This approach can compress the time needed to be able to construct and/or operate proposed natural gas facilities, since final Commission approval most often rests on other agencies reaching favorable determinations on requests for federal authorizations.

### **C. Consolidated Record**

25. Section 313 of EPAAct 2005 directs the Commission to “maintain a complete consolidated record of all decisions made or actions taken by the Commission or by a Federal administrative agency or officer (or State administrative agency or officer acting under delegated Federal authority) with respect to any Federal authorization.” The

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<sup>22</sup> Traditionally, the systematic review of the environmental aspects of a proposed natural gas project begins after an application is filed and after the Commission issues a public notice of intent to prepare an environmental assessment (EA) or environmental impact statement (EIS). However, the Commission need not wait for an application to be filed; instead, it can issue a notice of intent during the prefiling process. A project sponsor, in turn, need not wait for the Commission to issue a notice, but may choose to submit requests for authorizations to agencies at any time. In theory, the earlier a review of the environmental aspects of a proposed project can start, the earlier a final decision on a project can be reached – not by curtailing the time allotted to agencies and the Commission to complete their review, but by initiating the analysis sooner. Note that prefiling is mandatory only for certain LNG terminal projects; prefiling is optional for project sponsors of other types of natural gas facilities.

Commission proposes to do so by revising its Part 385 procedural rules to require that each agency or officer responsible for a federal authorization necessary for a proposed natural gas project file with the Commission a copy of the decision reached or action taken in response to a requested authorization within three days of the effective date of the final decision or action. In addition to filing a copy of the final decision or action, or a summary thereof, the Commission proposes that agencies and officers also file an index which identifies all documents and materials – including pleadings, comments, evidence, exhibits, transcripts of testimony, project alternatives (including alternative routings), studies, and maps – that are relevant to the result of request for a federal authorization. When the end of the time established by the Commission or allotted by federal law expires without a decision or action, within three days thereafter, the agency or officer will file with the Commission an index to the documents and materials submitted in the proceeding.

26. In the proposed new §§ 385.2013 and 385.2014, the Commission requires that agencies submit information – data requests, decisions, actions, indices, etc. – by electronic means, in accordance with § 385.2003(c) of the regulations. The Commission expects that making use of its current eFiling capability will prove more efficient for both those submitting information and for the Commission in processing the information submitted. The Commission urges any agency or officer with a differing expectation to comment. If the Commission finds filing via the Internet will be a hardship, paper filing will be permitted as an alternative.

27. The Commission's own record of its deliberations and decision, in aggregate with

copies of the agencies' decisions and indices, will constitute the "complete consolidated record" of each proceeding. EAct 2005 declares that this consolidated record "shall be the record" for appeals and reviews of decisions and actions by agencies and officials in response to requests for federal authorizations necessary for NGA section 3 and 7 natural gas projects. Thus, in appeals and reviews of agencies' and officials' decisions and actions, the reviewing authority is expected to rely on the consolidated record, and stipulations by the parties, to determine which portions of the complete record are relevant to the issues at hand. The reviewing authority may then request documents and materials referenced in an index and the full text of a decision or action. Agencies and officials must stand ready to present requested portions of the consolidated record to the reviewing authority.<sup>23</sup> Accordingly, agencies and officials are to retain all documents and materials relevant to their decisions and actions for at least three years, or until the conclusion of an appeal or review.

### **III. Environmental Analysis**

28. The Commission is required to prepare an EA or EIS for any action that may have a significant adverse effect on the human environment.<sup>24</sup> No environmental consideration is raised by the promulgation of a rule that is procedural in nature or does

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<sup>23</sup> See Fed. R. App. P. 17(b)(1) (2005) and 28 U.S.C. § 2112(b) (2000). An agency or official must be prepared to transmit to the reviewing authority the original papers, or certified copies, comprising the whole record of its proceeding and any supplemental record.

<sup>24</sup> Order No. 486, Regulations Implementing NEPA, 52 FR 47,897 (December 17, 1987), FERC Stats. & Regs. Preambles 1986-1990 ¶ 30,783 (1987).

not substantially change the effect of legislation or regulations being amended.<sup>25</sup> The EPOA 2005 provisions granting the Commission authority to set a schedule for certain agencies to act on requests for federal authorizations and requiring the Commission to maintain a consolidated record are procedural in nature and do not alter the requirements applicable to natural gas project sponsors or the responsibilities of the agencies involved in authorizing proposed projects. Accordingly, in this case, no environmental consideration is necessary.

#### **IV. Regulatory Flexibility Act Analysis**

29. The Regulatory Flexibility Act of 1980 (RFA)<sup>26</sup> generally requires a description and analysis of proposed regulations that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such an analysis if proposed regulations would not have such an effect.<sup>27</sup> Under the industry standards used for purposes of the RFA, a natural gas pipeline company qualifies as "a small entity" if it has annual revenues of \$6.5 million or less. Most companies regulated by the Commission do not fall within the RFA's definition of a small entity.<sup>28</sup>

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<sup>25</sup> 18 CFR 380.4(a)(2)(ii) (2005).

<sup>26</sup> 5 U.S.C. 601-612 (2000).

<sup>27</sup> 5 U.S.C. 605(b) (2000).

<sup>28</sup> 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 623 (2000). Section 3 of the Small Business Act defines a "small-business concern" as a business which is independently owned and operated and which is not dominant in its field of operation.

30. State agencies acting under federally delegated authority do not fall under the RFA definition of a small entity;<sup>29</sup> they are not described by the subsection pertaining to small businesses,<sup>30</sup> the subsection pertaining to small organizations,<sup>31</sup> or the subsection defining small governmental jurisdictions.<sup>32</sup> RFA section 601(5) defines “small governmental jurisdiction” as governments of cities, counties, towns, and similar entities with a population of less than fifty thousand. The Commission concludes that no state agencies acting under federally delegated authority meet this definition.

31. The procedural modifications proposed herein should have no significant economic impact on those entities – be they large or small – subject to the Commission’s regulatory jurisdiction under NGA section 3 or 7, and no significant economic impact on state agencies. Accordingly, the Commission certifies that this notice's proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities.

## **V. Information Collection Statement**

32. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting, record keeping, and public disclosure requirements (collections of information) imposed by an agency.<sup>33</sup> Therefore, the Commission is providing notice

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<sup>29</sup> 5 U.S.C. 601(6) (2000).

<sup>30</sup> 5 U.S.C. 601(3) (2000).

<sup>31</sup> 5 U.S.C. 601(4) (2000).

<sup>32</sup> 5 U.S.C. 601(5) (2000).

<sup>33</sup> 5 CFR 1320.11 (2005).

of its proposed information collections to OMB for review in accordance with section 3507(d) of the Paperwork Reduction Act of 1995.<sup>34</sup> Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date.

33. FERC-539, "Gas Pipeline Certificates: Import/Export Related," identifies the Commission's information collections relating to Part 153 of its regulations, which apply to facilities to import or export natural gas and for which authorization under section of the NGA is necessary. FERC-537, "Gas Pipeline Certificates: Construction, Acquisition and Abandonment," identifies the Commission's information collections relating to Part 157 of its regulations, which apply to natural gas facilities for which authorization under section 7 of the NGA is required. The proposed rulemaking will add two new information collection categories under Part 385 of the Commission's regulations: FERC-606, "Notification of Request for Federal Authorization **and Requests for Further Information**," which requires agencies or officials issuing, conditioning, or denying requests for federal authorizations necessary for a proposed natural gas project to inform the Commission of requests received and additional information, if any, requested of the applicant by the agency or official, and FERC-607, "Report on Decision or Action on Request for Federal Authorization," which requires agencies or officials to submit to the Commission a copy of a decision or action on a request for federal authorization and an accompanying index to the documents and materials relied on in reaching a conclusion.

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<sup>34</sup> 44 U.S.C. 3507(d) (2000).

34. The Commission has attempted to restrict additional reporting requirements to information essential to enable it to meet its EPCRA 2005 mandate to establish a schedule for federal authorizations and to maintain a complete consolidated record with the minimal additional information. The proposed additional reporting requirements are summarized below.

**A. Natural Gas Companies**

35. Project sponsors will be required to submit an additional exhibit with each application. However, the information in the new exhibit already should be readily available to the project sponsor; the new reporting requirement merely directs that this information be summarized and presented in tabular form.

36. The proposed new § 153.4 – which specifies that the procedural filing requirements of Part 157 of the Commission’s regulations that apply to applications under NGA section 7, also apply to applications under NGA section 3 – codifies current practice. As noted, project sponsors submitting NGA section 3 applications have heretofore adhered to the general filing procedures set forth in part 157 of the regulations; thus, the Commission does not view its endorsement of this past practice as imposing any additional reporting burden on NGA section 3 applicants.

**B. Federal and State Agencies and Officials Issuing, Conditioning, or Denying Federal Authorizations**

37. The proposed new § 385.2013 requires agencies and officials responsible for issuing, conditioning, or denying requests for federal authorizations necessary for a proposed natural gas project to report to the Commission regarding the status of an

authorization request. This reporting requirement is intended to allow agencies to assist the Commission to make better informed determinations in establishing due dates for agencies' decisions. The proposed new § 385.2014 requires the same agencies and officials to file with the Commission a copy of, or summary of, a decision and an index to the record of the proceeding.

38. The Commission anticipates that only minor modifications to current practice and procedure will be necessary to satisfy these proposed requirements. The Commission assumes that upon initial receipt of a request for federal authorizations, agencies make an initial assessment to verify whether the request is ready for processing. Proposed § 385.2013 directs the agency or official to forward that initial assessment to the Commission. If in the course of processing a request, an agency or official finds additional information from the applicant is needed, proposed new § 385.2013 directs the agency or official to forward to the Commission a copy of any data request sent to the applicant. With respect to proposed § 385.2014, the Commission assumes that in considering a request for a federal authorization, agencies compile and title the documents and materials they rely upon in reaching a decision. The Commission is not proposing a specific format for an index; thus, an agency's in-house recordkeeping may be presented as an index as long as it functions as a table of contents to the documents and materials. Note that in estimating the burden to provide the information specified in

the proposed new §§ 385.2013 and 385.2014, only state agencies acting pursuant to federally delegated authority under the CWA, CAA, CZMA, and NHPA are included.<sup>35</sup>

39. The Commission estimates that on an annual basis the burden to comply with this proposed rule will be as follows:

<b>Data Collection</b>	<b>Number of Respondents</b>	<b>Number of Responses</b>	<b>Hours per Response</b>	<b>Total Hours</b>
FERC-537	76	815	0.5	408
FERC-539	12	12	0.5	6
FERC-606	48	1702	4.4	7489
FERC-607	48	1654	6.3	10,423

Total Annual Hours for Collection: 18,326 hours.

These are mandatory information collection requirements.

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

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<sup>35</sup> See 44 U.S.C. 3502(3)(A) (2000) and 5 CFR 1320.3(c)(4) (2005), stating that “[a]gency requests for State or local governments to provide the agency with information constitute a collection of information requiring OMB approval, as are agency requests for respondents to provide information to State or local governments,” and 5 CFR 1320.3(d) (2005), stating that “[c]ollections of information conducted by State or local agencies under contract or in cooperation with a Federal agency are considered to be sponsored by the Federal agency and need to be approved by OMB.”

completing and transmitting the collection of information). The estimated cost is anticipated to be \$2,748,900.

Title: FERC-539, FERC-537, FERC-606, and FERC-607

Action: Proposed Data Collection

OMB Control No.: To be determined.

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

Frequency of Responses: On occasion.

Necessity of Information: On August 8, 2005, Congress enacted EAct 2005. Section 313 of EAct 2005 directs the Commission (1) to establish a schedule for state and federal agencies and officers to act on requests for federal authorizations required for NGA section 3 and 7 gas projects and (2) to maintain a complete consolidated record of all decisions or actions by the Commission and other agencies and officers with respect to federal authorizations. The Commission considers the regulatory revisions proposed herein the minimal necessary to be able to implement this Congressional mandate.

40. The Commission requests comments on the utility of the proposed information collection in meeting the mandates of EAct 2005, the accuracy of the burden estimates, how the quality, quantity, and clarity of the information to be collected might be enhanced, and any suggested methods for minimizing the respondent's burden and meeting the EAct 2005 mandate, including the use of automated information techniques. Interested persons may obtain information on the reporting requirements or submit comments by contacting the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 (Attention: Michael Miller, Office of the Executive

Director, 202-502-8415 or e-mail michael.miller@ferc.gov). Comments may also be sent to the Office of Management and Budget (Attention: Desk Officer for the Federal Energy Regulatory Commission, fax: 202-395-7285 or e-mail: oira\_submission@omb.eop.gov.)

## **VI. Public Comments**

41. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due by **[insert date 60 days from publication in the Federal Register]**. Comments must refer to Docket No. RM06-1-000, and must include the commenter's name, the organization represented, if applicable, and address in the comments. Comments may be filed either in electronic or paper format. The Commission encourages electronic filing.

42. Comments may be filed electronically via the eFiling link on the Commission's web site at <http://www.ferc.gov>. The Commission accepts most standard word processing formats and requests commenters to submit comments in a text-searchable format rather than a scanned image format. Commenters filing electronically do not need to make a paper filing. Commenters unable to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, N.E., Washington, DC, 20426.

43. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

**VII. Document Availability**

44. In addition to publishing the full text of this document in the Federal Register, the Commission provides all interested persons an opportunity to view and print the contents of this document via the Internet through FERC's Home Page (<http://www.ferc.gov>) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, N.E., Room 2A, Washington D.C. 20426.

**List of subjects****18 CFR Part 153**

Exports, Imports, Natural gas, Reporting and recordkeeping requirements

**18 CFR Part 157**

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

**18 CFR Part 375**

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

**18 CFR Part 385**

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

By direction of the Commission.

Magalie R. Salas  
Secretary.

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

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

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

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

2. Section 153.4 is added to read as follows:

**§ 153.4 General requirements.**

The procedures in §§ 157.5, 157.6, 157.8, 157.9, 157.10, 157.11, and 157.12 of this chapter are applicable to applications under section 3 of the Natural Gas Act filed pursuant to subpart B of this part.

3. In § 153.8, paragraph (a)(9) is added to read as follows:

**§ 153.8 Required exhibits.**

(a) \* \* \*

(9) Exhibit H. A statement identifying each Federal authorization that the proposal will require; the Federal agency or officer, or State agency or officer acting pursuant to delegated Federal authority, which will issue each authorization; the date each request for authorization was submitted; and the date by which final action on each Federal authorization has been requested or is expected.

\* \* \* \* \*

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

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

**Authority:** 15 U.S.C. 717-717w, 3301-3432; 42 U.S.C. 7101-7352.

5. In §157.9, the title is revised, the current single paragraph is designated as paragraph (a), and a new paragraph (b) is added to read as follows:

**§ 157.9 Notice of application and notice of schedule for Federal authorizations.**

(a) \* \* \*

(b) Notice of each application may itemize each permit, special use authorization, certificate, opinion, or other approval that will be required under Federal law, and may specify a schedule for each Federal agency or officer, or State agency or officer acting pursuant to delegated Federal authority, to act on a request for Federal authorization. Final action on a request for Federal authorization is due no later than 90 days after the issuance of the Commission's final environmental document, or final order if no environmental document is issued, unless a schedule is otherwise established by Federal law or by the Commission.

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

**§ 157.14 Exhibits.**

(a) \* \* \*

(12) Exhibit J – Federal authorizations. A statement identifying each Federal authorization that the proposal will require; the Federal agency or officer, or State agency or officer acting pursuant to delegated Federal authority, which will issue each authorization; the date each request for authorization was submitted; and the date by which final action on each Federal authorization has been requested or is expected.

\* \* \* \* \*

**PART 375 – THE COMMISSION**

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

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

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

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

\* \* \* \* \*

(bb) Establish a schedule consistent with Federal law for each Federal agency or officer, or State agency or officer acting pursuant to delegated Federal authority, to issue or deny Federal authorizations required for applications under section 3 or 7 of the Natural Gas Act.

**PART 385 – RULES OF PRACTICE AND PROCEDURE**

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

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

10. Section 385.2013 is redesignated as § 385.2015, and §§ 385.2013 and 385.2014 are added to read as follows:

**§ 385.2013 Notification of requests for Federal authorizations and requests for further information.**

(a) For each Federal authorization – i.e., permit, special use authorization, certification, concurrence, opinion, or other approval – required under Federal law with respect to an application for authorization under section 3 of the Natural Gas Act or a certificate of public convenience and necessity under section 7 of the Natural Gas Act, each Federal or State agency or officer responsible for a Federal authorization must file with the Commission, by electronic means, within thirty days of the date of receipt of a request for a Federal authorization, notice of the following:

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

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

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

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

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

(b) A Federal or State agency or officer considering a request for a Federal authorization that submits a data request to an applicant must file a copy of the data request with the Commission, by electronic means, within three days of submitting the request to the applicant.

**§ 385.2014 Petitions for appeal or review of Federal authorizations.**

(a) For each Federal authorization – i.e., permit, special use authorization, certification, concurrence, opinion, or other approval – required under Federal law with respect to an application for authorization under section 3 of the Natural Gas Act or a certificate of public convenience and necessity under section 7 of the Natural Gas Act, the Federal or State agency or officer responsible for each Federal authorization must file with the Commission, by electronic means, within three days of the effective date of a decision or action on a request for a Federal authorization or the expiration of the time provided to act, the following:

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

(b) The agencies’ and officers’ decisions, actions, and indices, and the Commission’s record in each proceeding, constitute the complete consolidated record.

The original documents and materials that make up the complete consolidated record must be retained by agencies, officers, and the Commission for at least three years from the effective date of a decision or action or until an appeal or review is concluded.

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