

**UNITED STATES OF AMERICA  
BEFORE THE  
DEPARTMENT OF COMMERCE  
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION**

**Coastal Zone Management Act Federal  
Consistency Regulations**

**Docket No. 030604145-3145-01**

**Comments of NiSource Pipelines**

Pursuant to notice published in the Federal Register June 11, 2003,<sup>1</sup> the National Oceanic and Atmospheric Administration (NOAA) proposes to revise the Federal Consistency regulations under the Coastal Zone Management Act of 1972 (CZMA) and requests comments on its proposal. As interstate pipelines, NiSource Pipelines have a direct interest in any effort to revise the Federal Consistency regulations for the CZMA<sup>2</sup>. NiSource Pipelines are comprehensively regulated by the Federal Energy Regulatory Commission (FERC) whose jurisdictional reach extends to the rates, services and facilities of interstate natural gas pipelines. Contact with CZMA matters arises primarily through the FERC certificate application process through which interstate pipelines obtain approval for the construction and operation of natural gas pipeline facilities which will transport natural gas in interstate commerce. A significant part of the FERC certificate application process is triggered by the FERC's implementation of the National Environmental Policy Act of 1969. Those implementation regulations require an interstate pipeline applicant to provide to the FERC, among other things, a consistency determination from the relevant state's Coastal Zone Management Program for proposed facilities within a designated coastal zone management area.<sup>3</sup>

Having reviewed the proposed revisions, NiSource Pipelines will not comment on specific aspects of the proposed revisions but rather will comment generally on the necessity for the Federal Consistency regulations to be revised and implemented in a manner that permits the FERC to effectively administer its broad jurisdictional regulation of interstate pipeline construction proposals<sup>4</sup>. With its roots in the Natural Gas Act of 1938<sup>5</sup> (NGA) the FERC's certificate application process is comprehensive,

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<sup>1</sup> 68 Fed. Reg. 34851 (June 11, 2003).

<sup>2</sup> NiSource Pipelines include Columbia Gas Transmission Corporation, Columbia Gulf Transmission Company, Crossroads Pipeline Company and Granite State Gas Transmission, Inc., which are each direct or indirect subsidiaries of NiSource, Inc., a registered holding company under the Public Utility Holding Company Act of 1935.

<sup>3</sup> 18 C.F.R. Part 380..

<sup>4</sup> NiSource Pipelines note that Columbia Gas Transmission Corporation is a partner in the Millennium Pipeline Project which currently has a CZMA matter pending before the U. S. Department of Commerce.

<sup>5</sup> 15 U.S.C. §717, *et. seq.* (1938).

exclusive and final but for the review provided by the NGA in the U. S. Courts of Appeals<sup>6</sup>. Such comprehensiveness, exclusivity and finality is essential to the national interstate natural gas transmission system which, by geographic necessity, passes through many state and local jurisdictions, each of whom have their own laws, regulations and localized concerns. The FERC, through its certificate application process, accommodates and balances the varied concerns of all stakeholders, including state and local governments, and provides the regulatory certainty essential for the construction and operation of interstate natural gas pipeline facilities.

Recent experience with the CZMA process related to several interstate natural gas pipeline projects suggests that CZMA implementation is at odds with the goals of the NGA by undercutting the regulatory certainty previously guaranteed by FERC jurisdiction and regulation. The CZMA process now deals not only with narrow CZMA issues but also allows for the reopening of a host of issues already resolved by the FERC certificate process including need, route and other core aspects of the interstate pipeline project. To NiSource Pipelines' knowledge, in no other setting is a FERC approved interstate pipeline project subject to what is equivalent to *de novo* review by another agency ostensibly for the purposes of implementing environmental legislation.

In addition to being inconsistent with the goals of the NGA, the regulatory uncertainty created is in direct conflict with the President's National Energy Policy plan on energy infrastructure. The National Energy Policy Development Group (NEPDG) established by President Bush issued recommendations for a National Energy Policy in a report given to the President on May 16, 2001. The NEPDG recommended, among other things, that agencies be directed to expedite pipeline permitting and coordinate federal, state and local actions needed for energy related project approvals via an interagency task force chaired by the Council on Environmental Quality.<sup>7</sup> Immediately thereafter, President Bush issued Executive Order 13212 affirming the NEPDG's recommendations including the two items noted above. The interagency task force created thereby was specifically charged with assisting agency efforts to expedite permit reviews and similar actions necessary to accelerate energy projects. The Department of Commerce was among those named to the interagency task force. Moreover, the Department of Commerce is a signatory with the FERC and other agencies to the May, 2002 federal interagency agreement whose purpose is to streamline and expedite review of energy related projects via the coordination of required environmental

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<sup>6</sup> See, e.g., Schneidewind v. ANR Pipeline Co., 485 U.S. 293 (1988); National Fuel Gas Supply v. Public Service Commission, 894 F.2d 571 (2d Cir. 1989); and Iroquois Gas Transmission System, L.P., et al., 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

<sup>7</sup> White House Task Force On Energy Project Streamlining.

and historic preservation reviews.<sup>8</sup> Yet, despite the President's clear policies, the task force and the interagency agreement, the current CZMA process is administered in a fashion which thwarts the President's energy infrastructure modernization and expansion goals.

There can be no question that energy infrastructure, renovation and development is essential to the United States. And such renovation and development must be done in a manner consistent with NEPA goals and the individual environmental statutes such as CZMA, National Historic Preservation Act of 1966<sup>9</sup> (NHPA) Endangered Species Act of 1973<sup>10</sup> (ESA) and similar statutes. Thus the issue is not whether to implement CZMA and similar statutes for interstate pipeline projects but how that implementation occurs. NiSource Pipelines submit that the NGA and the regulations promulgated thereunder have created the appropriate framework for implementation of NEPA, CZMA and other similar legislation. The FERC's certificate application review process covers matters of this type efficiently and effectively—and with finality. It is unnecessary and inappropriate to create what is, in effect, a duplicate "certificate" process to meet CZMA goals. Were the current trend extended to other significant environmental statutes, a FERC approved interstate pipeline project would face an endless gauntlet of certificate-like proceedings in order to comply, for example, with the NHPA or the ESA. It is not hard to imagine that these proceedings would or could reach inconsistent results—either with each other or with the already issued FERC certificate. The better approach is to focus on the FERC as the lead agency and require interstate pipeline certificate applicants to resolve CZMA issues within that single forum. To that end, the Federal Consistency regulations should be revised to require, as a condition for approval of a state's CZMA program, that the state participate in the FERC's certificate/NEPA environmental review process to ensure that FERC has the opportunity to address the state's concerns. To the extent that the CZMA or regulations thereunder require NOAA to make a determination in its own name (as distinguished from resolving CZMA matters within the FERC certificate process) NOAA should accept the record developed at FERC as being dispositive of the issues reviewed and resolved by the FERC certificate process.

NiSource Pipelines urge NOAA to keep these concerns in mind as it revises the Federal Consistency regulations for CZMA matters.

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<sup>8</sup> Interagency Agreement On Early Coordination Of Required Environmental And Historic Preservation Reviews Conducted In Conjunction With The Issuance Of Authorizations To Construct And Operate Interstate Natural Gas Pipelines Certificated By the Federal Energy Regulatory Commission (May, 2002).

<sup>9</sup> 16 U.S.C. §470, *et seq.*

<sup>10</sup> 16 U.S.C. §1531, *et seq.*

Respectfully Submitted,

**NISOURCE PIPELINES**

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