
FEDERAL ENERGY REGULATORY COMMISSION



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NEWS RELEASE

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COMMISSION FINALIZES RULE ON CONSOLIDATED FEDERAL RECORD FOR JUDICIAL REVIEW OF GAS INFRASTRUCTURE PROPOSALS

The Federal Energy Regulatory Commission today finalized a rulemaking that implements provisions of the Energy Policy Act of 2005 requiring the Commission to coordinate the environmental review and the issuance of all federal authorizations for natural gas infrastructure proposals with other federal and state agencies, and to maintain a consolidated federal record for judicial appeal and review.

“This final rule strikes an appropriate balance. It provides adequate time for federal regulatory deliberation, and allows project sponsors to avoid protracted regulatory review and judicial review processes,” Commission Chairman Joseph T. Kelliher said.

Under the final rule, the Commission will act as lead agency for environmental review and will establish a schedule by which federal agencies, as well as state agencies acting under federally delegated authority, will reach final regulatory decisions necessary for the approval of natural gas infrastructure projects under section 3 or section 7 of the Natural Gas Act. The new rule applies to natural gas pipelines, compressor stations, storage fields, liquefied natural gas terminals and other related facilities.

The deadline for agencies’ final decisions will be 90 days after Commission staff issues either an environmental assessment (EA) or an environmental impact statement (EIS) in a proceeding. The 90-day deadline would not apply if an agency’s deadline is otherwise determined by federal law. To provide agencies with advance notice of when their final regulatory decisions will be due, the Commission will issue a scheduling notice for its environmental review, including target dates for issuance of the final EIS or EA.

The Commission determined the 90-day timeframe will provide more certainty to the project applicants and to the public as to when to expect agency decisions affecting natural gas infrastructure proposals.

Although the Commission has authority to approve interstate gas infrastructure proposals under the Natural Gas Act, in general a project may not move forward unless

several other agencies have also made favorable rulings regarding other aspects of the proposal under other federal laws.

For example, state agencies have federally delegated authority under the Coastal Zone Management Act, administered by the U.S. Department of Commerce; the Clean Air Act, administered by the U.S. Environmental Protection Agency; and the Clean Water Act, administered by the U.S. Army Corps of Engineers.

Within 30 days of receiving an applicant's request for a federal authorization, the final rule directs agencies to inform the Commission: (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; (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 established by federal law for an agency to act. In addition, agencies are to provide the Commission with a copy of any data requests sent to applicants.

In addition to requiring the Commission to coordinate regulatory review among various agencies, the Energy Policy Act directed 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. This provision of the Energy Policy Act was recently upheld in a decision by the U.S. Court of Appeals for the Second Circuit.

The final rule will require agencies to provide the Commission with a copy of the final decision or action taken and an index to the record to be filed within 30 days after the issuance of the agency's final decision or action. The Commission said a three-day timeframe, as proposed in a May 2006 Notice of Proposed Rulemaking, was not needed to satisfy the Energy Policy Act mandate to maintain a complete consolidated record.

The rule takes effect 60 days after publication in the *Federal Register*.