ORAL ARGUMENT NOT YET SCHEDULED

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

No. 15-1133

SIERRA CLUB,
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: January 12, 2016

CIRCUIT RULE 28(A)(1) CERTIFICATE

A. Parties and Amici

Except for the following, all parties, intervenors, and amici appearing before the Federal Energy Regulatory Commission in the underlying dockets and in this Court are listed in the Brief of Petitioner:

Tennessee Gas Pipeline Company, L.L.C.
Natural Gas Pipeline Company of America LLC
Kinder Morgan Tejas Pipeline LLC

B. Rulings Under Review

1. Order Granting Authorization Under Section 3 of the Natural Gas Act and Issuing Certificates, *Corpus Christi Liquefaction, LLC, et al.*, FERC Docket Nos. CP12-507 & CP12-508, 149 FERC ¶ 61,283 (Dec. 30, 2014), R. 276, JA 1068; and

2. Order Denying Rehearing, *Corpus Christi Liquefaction, LLC, et al.*, FERC Docket Nos. CP12-507 & CP12-508, 151 FERC ¶ 61,098 (May 6, 2015), R. 329, JA 1151.

C. Related Cases

This case has not previously been before this Court or any other court. Three related cases within the meaning of D.C. Cir. R. 28(a)(1)(C) are currently pending in this Court: *Sierra Club v. FERC*, D.C. Cir. No. 14-1249, and *Sierra Club, et al. v. FERC*, D.C. Cir. No. 14-1275, in which oral arguments were held on November 13, 2015, and *Earth Reports, Inc. (d/b/a/ Patuxent Riverkeeper), et al. v. FERC*, No. 15-1127, where Sierra Club is one of the petitioners and briefing is under way.

/s/ *Carol J. Banta*
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2012 Export Study	U.S. Energy Information Administration, *Effect of Increased Natural Gas Exports on Domestic Energy Markets, as Requested by the Office of Fossil Energy* (Jan. 2012), *available at* http://www.eia.gov/analysis/requests/fe/pdf/fe_lng.pdf
Authorization Order	Order Granting Authorization Under Section 3 of the Natural Gas Act and Issuing Certificates, *Corpus Christi Liquefaction, LLC*, 149 FERC ¶ 61,283 (2014), R. 276, JA 1068
Br.	Petitioner's opening brief
Cheniere	Collectively, Corpus Christi Liquefaction, LLC and Cheniere Corpus Christi Pipeline, L.P., applicants in the FERC proceeding and intervenors in this appeal
Commission or FERC	Respondent Federal Energy Regulatory Commission
Department or DOE	Department of Energy
Environmental Addendum	U.S. Department of Energy, *Addendum to Environmental Review Documents Concerning Exports of Natural Gas from the United States* (Aug. 2014), *available at* http://www.energy.gov/sites/prod/files/2014/08/f18/Addendum.pdf
Environmental Impact Statement or EIS	Final Environmental Impact Statement, Corpus Christi LNG Project, Docket Nos. CP12-507, *et al.* (Oct. 2014), R. 264, JA 434

GLOSSARY

Export Order	*Cheniere Marketing, LLC, et al.*, Final Opinion and Order Granting Authorization to Export LNG by Vessel to Non-Free Trade Agreement Nations, DOE/FE Order No. 3638 (May 12, 2015)
JA	Joint Appendix
LNG	Liquefied Natural Gas
NEPA	National Environmental Policy Act
P	Paragraph in a FERC order
Pipeline	A bi-directional pipeline, approved in the challenged FERC orders, that will connect the Terminal to interconnections with various interstate and intrastate pipeline facilities
Project	Collectively, the Terminal and the Pipeline
Rehearing Order	Order Denying Rehearing, *Corpus Christi Liquefaction, LLC*, 151 FERC ¶ 61,098 (2015), R. 329, JA 1151
Terminal	A proposed LNG import and export terminal to be constructed and operated in Corpus Christi, Texas
Updated Export Study	U.S. Energy Information Administration, *Effect of Increased Levels of Liquefied Natural Gas Exports on U.S. Energy Markets* (Oct. 2014), *available at* http://www.eia.gov/analysis/requests/fe/pdf/lng.pdf

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BRIEF FOR RESPONDENT FEDERAL ENERGY REGULATORY COMMISSION

STATEMENT OF THE ISSUE

In 2014, the Federal Energy Regulatory Commission ("Commission" or "FERC"), after conducting an extensive environmental review, conditionally authorized an application to construct and operate facilities for the transport of natural gas and the import and export of liquefied natural gas. The question presented on appeal is whether the Commission's environmental review satisfied the procedural requirements of the National Environmental Policy Act.

STATUTORY AND REGULATORY PROVISIONS

Pertinent statutes and regulations are contained in the attached Addendum.

INTRODUCTION

This proceeding involves the Commission's environmental review related to a proposed liquefied natural gas ("LNG") import and export project, over which regulatory responsibility is divided between the Commission and the Department of Energy. The Commission authorizes the physical facilities and the Department of Energy oversees the commodity.

Specifically, in 2012, Corpus Christi Liquefaction, LLC and Cheniere Corpus Christi Pipeline, L.P. (together, "Cheniere") filed an application with FERC under sections 3 and 7 of the Natural Gas Act, 15 U.S.C. §§ 717b, 717f, for authorization to construct and operate an LNG project that will provide the facilities necessary to import, export, store, vaporize, and liquefy natural gas. Those facilities will offer the ability to deliver imported gas into existing interstate and intrastate natural gas pipelines in the Corpus Christi area, or to export LNG globally. Concurrently, Cheniere filed with the Department of Energy for the necessary authorization under section 3 of the Natural Gas Act, 15 U.S.C. § 717b, to export LNG from Cheniere's proposed terminal.

At issue is the Commission's environmental review of the construction and operation of the LNG import/export terminal and the associated natural gas

pipeline that interconnects with five existing pipeline systems. In the orders on review, the Commission conditionally approved Cheniere's applications to construct the terminal and pipeline. *Corpus Christi Liquefaction, LLC*, 149 FERC ¶ 61,283 (Dec. 30, 2014) ("Authorization Order"), R. 276, JA 1068, *reh'g denied*, 151 FERC ¶ 61,098 (May 6, 2015) ("Rehearing Order"), R. 329, JA 1151.[1] The Commission's approval was expressly conditioned upon the fulfillment of numerous conditions, including receipt of all necessary authorizations from relevant state and federal agencies.

Before the Commission, Petitioner Sierra Club raised numerous challenges to the Commission's environmental review of the project. On appeal, Sierra Club's challenges are reduced to four claims. Specifically, Sierra Club argues that the Commission: (1) failed to consider the indirect impacts arising from increased natural gas production and increased use of coal in lieu of natural gas by electric generators (Br. 34-50); (2) failed to include in the cumulative impacts analysis other LNG export projects throughout the United States (Br. 54-56); (3) failed to take a hard look at using electric motors to drive liquefaction compressors as an alternative (Br. 56-63); and (4) failed to use Sierra Club's preferred tool for quantifying the project's impact on global greenhouse gas emissions (Br. 63-74).

[1] "R" refers to a record item. "JA" refers to the Joint Appendix page number. "P" refers to the internal paragraph number within a FERC order.

The Commission addressed and rejected these (and many other) contentions in the challenged orders.

In a separate, ongoing proceeding, the Department of Energy issued an order authorizing Cheniere's export of LNG. In that Department proceeding, Sierra Club raised many of the same environmental challenges that it raised at FERC. The Department addressed Sierra Club's concerns by publishing two reports analyzing the environmental impacts associated with the export of LNG and increased production of natural gas. Nonetheless, Sierra Club continues to pursue its arguments at the Department in a pending request for rehearing, and will have the right to appeal (separately) the Department's findings. *See* 15 U.S.C. § 717r(d)(1) (providing for judicial review of orders by the Department issued pursuant to NGA section 3).

STATEMENT OF FACTS

I. STATUTORY AND REGULATORY BACKGROUND

A. The Natural Gas Act

The Commission has "exclusive jurisdiction over the transportation and sale of natural gas in interstate commerce for resale." *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 300-01 (1988). Section 3 of the Act, 15 U.S.C. § 717b, prohibits the exportation of any natural gas from the United States to a foreign country without "first having secured an order of the Commission authorizing" such exportation. Congress transferred the regulatory functions of NGA section 3

to the Department of Energy (the "Department") in 1977. *See* 42 U.S.C. § 7151(b) (Department of Energy Organization Act). The Department subsequently delegated back to the Commission the limited authority under NGA section 3(e), 15 U.S.C. § 717b(e), to approve the siting, construction, and operation of import and export facilities. *See* DOE Delegation Order No. 00-044.00A (effective May 16, 2006) (renewing delegation to the Commission of authority over the construction and operation of LNG facilities). The Department retains, under section 3(a)-(c) of the NGA, exclusive authority over the export of natural gas as a commodity, including the responsibility to determine whether the exportation of natural gas "will not be consistent with the public interest." 15 U.S.C. § 717b(a).

The Commission's NGA section 3 authority, as exercised here, is to license the "siting, construction, expansion, or operation" of LNG terminals. 15 U.S.C. § 717b(e)(1); *see also id.* § 717(a)(1) (defining "LNG terminal" as onshore facilities used to receive or process natural gas that is imported to or exported from the U.S., or transported by ships in interstate commerce). In doing so, the Commission considers the technical and environmental aspects of the facilities themselves. The Commission "shall" authorize a proposed LNG project unless it finds that construction and operation of the proposed facilities "will not be consistent with the public interest." *Id.* § 717b(a).

Under NGA section 7, the Commission also has authority to approve construction of an interstate natural gas pipeline. 15 U.S.C. § 717f(c)(1)(A). *See, e.g.*, *Consol. Edison Co. of N.Y., Inc. v. FERC*, 315 F.3d 316, 319 (D.C. Cir. 2003) ("Any pipeline seeking to build or to expand its facilities must first apply for a certificate of public convenience and necessity from FERC.").

The section 3 "public interest" standard is applied differently than the section 7 "public convenience and necessity" standard. *See W. Va. Pub. Servs. Comm'n v. Dep't of Energy*, 681 F.2d 847, 856 (D.C. Cir. 1982); *see also* 15 U.S.C. § 717f(e) (Section 7 "certificate shall be issued" if the proposed natural gas facility "is or will be required by the present or future public convenience and necessity"). Unlike section 7, section 3 "sets out a general presumption favoring such authorization . . . ." *W. Va.*, 681 F.2d at 856. Accordingly, under NGA section 3, the Commission must authorize an LNG project unless it makes a negative finding that the proposed project is not consistent with the public interest. *Id.* (citing *Cia Mexicana de Gas v. FPC*, 167 F.2d 804, 806 (5th Cir. 1948)).

B. National Environmental Policy Act

In considering an application for authorization to site, construct, and operate LNG facilities and natural gas pipelines, the Commission must conduct an environmental review under the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321, *et seq.* "NEPA is a procedural statute; it 'does not mandate

particular results, but simply prescribes the necessary process.'" *Minisink Residents for Envtl. Preservation & Safety v. FERC*, 762 F.3d 97, 111 (D.C. Cir. 2014) (quoting *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) (same). "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 (citing *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 impact of its action[]." *Minisink*, 762 F.3d at 111; *see also Balt. Gas & Elec. Co. v. Nat. Res. Def. Council, Inc.*, 462 U.S. 87, 97 (1983) (same). Regulations implementing NEPA require federal 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).

The Natural Gas Act, as amended by the Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005), designated 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," including any authorization required under section 3 of the NGA. *See* 15 U.S.C. § 717n(b)(1). With respect to the Corpus Christi Project, the Commission served as the lead federal agency for the preparation of the environmental documents necessary to comply with NEPA. The Department of Energy and several other federal agencies served as cooperating agencies. *See* Final Environmental Impact Statement, Corpus Christi LNG Project, Docket Nos. CP12-507, *et al.* (Oct. 2014), R. 264, JA 434 ("EIS" or "Environmental Impact Statement"). Cooperating agencies have jurisdiction by law, or special expertise with respect to the environmental resource issues associated with the project at issue, and participate in the environmental analysis. *See id.* at 1, JA 435.

II. THE COMMISSION'S REVIEW OF THE CORPUS CHRISTI PROJECT

A. The Corpus Christi Project

In August 2012, Cheniere filed an application with the Commission for the LNG import and export terminal ("Terminal") and a bi-directional 23-mile-long pipeline ("Pipeline") from the terminal to several interconnections with various interstate and intrastate pipeline facilities in San Patricio County, Texas (together the "Project"). Application for Authorizations under the Natural Gas Act, Docket Nos. CP12-507 and CP12-508 at 5-6, R. 73, JA 101-02. The Terminal is sited at

the same property as Cheniere's previously authorized, but not constructed, LNG import terminal. *Id.* at 5; *see also Corpus Christi LNG, L.P.*, 111 FERC ¶ 61,081 at PP 1, 6 (2005) (authorizing Cheniere to construct and operate an LNG import terminal in San Patricio County, Texas after full environmental review). Likewise, the proposed pipeline is largely the same as Cheniere's previously authorized 23-mile pipeline. Cheniere Application at 4, JA 100. Due to a shift in natural gas market dynamics, the originally authorized import terminal and pipeline were not constructed. *See id.*; *see also Corpus Christi LNG, L.P.*, 139 FERC ¶ 61,195 (2012) (order vacating Cheniere's NGA authorizations).

The Terminal project includes the siting, construction, and operation of facilities necessary to liquefy domestic natural gas for export and regasify imported foreign-sourced LNG. Cheniere Application at 4, JA 100. The major components of the Terminal project include liquefaction facilities capable of liquefying approximately 700 million cubic feet per day of natural gas, LNG vaporization facilities capable of vaporizing approximately 200 million cubic feet per day of LNG, LNG storage facilities, and marine (docking) facilities. *Id.* at 8, JA 104; EIS at ES-1 to -2, JA 459-60.

The Pipeline project includes construction and operation of 23 miles of 48-inch-diameter natural gas pipeline extending from the Terminal to interconnects with five major interstate and intrastate systems: Texas Eastern Transmission,

L.P.; Kinder Morgan Tejas Pipeline LLC; Natural Gas Pipeline Company, LLC; Transcontinental Gas Pipe Line Company, LLC; and Tennessee Gas Pipeline Company, LLC. EIS at ES-2, 2-9, JA 460, 501. The Pipeline will be capable of transporting up to 2.25 billion cubic feet per day of natural gas to markets throughout the United States or to the Terminal via those interconnects. EIS at 1-1, 2-1, JA 459, 493.

B. The Commission's Environmental Review

The Commission initiated its environmental review of the Project in December 2011 using the Commission's "pre-filing" process.[2] The Commission served as the lead agency for the preparation of the environmental impact statement for the Project. EIS at ES-1, JA 459. To that end, the Commission consulted with federal and state agencies to identify issues that should be addressed in the Impact Statement. EIS at ES-2, JA 460. Several federal agencies, including the Department of Energy, participated in the environmental review as

[2] The Commission's "pre-filing" process may be used by builders of interstate natural gas and LNG facilities. *See Guidance: FERC Staff NEPA Pre-Filing Involvement In Natural Gas Projects* (Oct. 23, 2002). The pre-filing process allows project sponsors to engage in early project-development involvement with the public and agencies, as contemplated by the National Environmental Policy Act, typically seven to eight months prior to submitting a formal project application.

cooperating agencies.[3] EIS at ES-1, 1-7, JA 459, 475; *see also* EIS at 1-9 through 1-10 (describing the Department of Energy's role), JA 477-78.

In June 2014, Commission staff issued a draft environmental impact statement. R. 231. Sierra Club filed comments on the draft environmental impact statement raising concerns regarding the Project's impacts on air pollution, design alternatives, and the indirect effects of the Project. R. 246, JA 339. In October 2014, the Commission staff issued the 630-page Final Environmental Impact Statement, which addressed all comments, including Sierra Club's. R. 264, JA 434. Sierra Club raised no objections to the Final Environmental Impact Statement.

C. The Authorization Order

On December 30, 2014, the Commission issued a conditional order authorizing the Project upon satisfaction of numerous environmental conditions. Authorization Order at P 3 & App. A, JA 1069, 1112-28. The Commission's environmental review of the Project considered the Final Environmental Impact Statement and all substantive comments on it. *See id.* at PP 93-125, JA 1099-1109. The Commission addressed a range of issues, including those raised in this appeal:

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[3] The Department can adopt and use the final EIS to support its respective export authorization after an independent review of the document, but it must present its own conclusions and recommendations in its own record of decision.

indirect impacts from induced natural gas production (*id.* at PP 118-20, JA 1106-08); cumulative impacts (*id.* at PP 112-14, JA 1104-05); and greenhouse gas emissions (*id.* at PP 121-22, JA 1108-09).

Ultimately, the Commission concurred with the Final Environmental Impact Statement and determined that the construction and operation of the Project would result in some adverse environmental impacts, but that the impacts would be sufficiently minimized by the required mitigation measures. *Id.* at PP 100, 123, JA 1101, 1109. The Commission held that, subject to compliance with 104 environmental conditions, the Project is an environmentally acceptable action. *Id.* at P 123, JA 1109. Among the conditions, the Authorization Order requires Cheniere to obtain all necessary authorizations from relevant state and federal agencies, including the Department of Energy's NGA section 3 export authorization. *Id.* at App. A, Condition 10, JA 1116.

D. The Rehearing Order

Sierra Club was the only party to seek rehearing of the Commission's Authorization Order. *See Corpus Christi Liquefaction, LLC*, Request for Rehearing of Sierra Club (Jan. 29, 2015) ("Rehearing Request"), R. 287, JA 1131. On rehearing, the Commission rejected all of Sierra Club's challenges regarding FERC's compliance with NEPA. *See* Rehearing Order at P 1, JA 1151.

As relevant to this appeal, the Commission affirmed its determination in the Authorization Order that environmental effects associated with induced natural gas production are neither causally related to the Project nor reasonably foreseeable. *Id.* at P 17, JA 1159; *see also id.* at PP 8-23, JA 1154-61. The Commission also rejected Sierra Club's contentions that the Commission was required to analyze the cumulative impacts of all other LNG export projects that have received conditional export authorization from the Department of Energy (*id.* at PP 24-31, JA 1161-64), and that NEPA requires an analysis of the indirect effects related to increased use of coal for domestic electricity production (*id.* at PP 32-33, JA 1164-65). The Commission also rejected Sierra Club's rehearing argument that FERC failed to take a hard look at (1) using electric motor compressors for liquefaction in lieu of gas compressors (*id.* at PP 41-48, JA 1169-71) and (2) the impact of greenhouse gas emissions from the Project (*id.* at PP 49-52, JA 1171-73).

This appeal followed.

III. THE DEPARTMENT OF ENERGY'S REVIEW

Concurrent with the Commission's review of the Project, pending before the Department of Energy is Cheniere's application for authority under section 3(a) of the Natural Gas Act to export LNG to countries with which the United States does

not have a free-trade agreement.[4] *See* Authorization Order at P 21, JA 1076 (citing Department of Energy, Office of Fossil Energy Docket No. 12-97-LNG). Sierra Club intervened in the Department's proceeding, raising identical challenges regarding the induced natural gas production that it raised in the FERC proceeding. *See* Authorization Order at P 19 n.27, JA 1075 (citing Sierra Club's Motion to Intervene, Protest, and Comments, DOE Docket No. 12-97-LNG (Dec. 26, 2012)).

In May 2015, the Department issued a final order in DOE Docket No. 12-97-LNG, granting Cheniere approval to export LNG to non-free-trade countries. *Cheniere Marketing, LLC, et al.*, Final Opinion and Order Granting Authorization to Export LNG by Vessel to Non-Free Trade Agreement Nations, DOE/FE Order No. 3638 (May 12, 2015) ("Export Order"). The Department stated that, to evaluate Cheniere's export authorization application, it reviewed a "wide range" of information addressing environmental considerations, including: (1) U.S. Energy Information Administration, *Effect of Increased Natural Gas Exports on Domestic Energy Markets, as Requested by the Office of Fossil Energy* ("2012 Export

[4] In 2012, the Department approved Cheniere's application to export LNG to countries with which the United States has free-trade agreements. *See* Authorization Order at P 21, JA 1076 (summarizing Cheniere's LNG export applications filed with the Department). *See* NGA § 3(c), 15 U.S.C. § 717b(c) (providing expedited process and mandatory approval for such applications).

Study")[5]; (2) the *Addendum to Environmental Review Documents Concerning Exports of Natural Gas from the United States* ("Environmental Addendum")[6]; and (3) the *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas from the United States* ("Greenhouse Gas Report").[7] Export Order at 183-84.

In addition, the Department independently reviewed and adopted the Commission's Final Environmental Impact Statement. *Id.* at 10-11 (conditioning its export authorization on Cheniere's compliance with the 104 environmental conditions recommended in the EIS); *see also id.* at 192 (adopting the EIS). With respect to Sierra Club's arguments concerning impacts from induced natural gas production, the Department concluded that "FERC's environmental review covered all reasonably foreseeable environmental impacts of the Liquefaction Project, and that NEPA does not require the review to include induced upstream natural gas production." *Id.* at 193.

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5 *Available at* http://www.eia.gov/analysis/requests/fe/pdf/fe_lng.pdf.

6 *Addendum to Environmental Review Documents Concerning Exports of Natural Gas from the United States*, 79 Fed. Reg. 48,132 (Aug. 15, 2014), *available at* http://www.energy.gov/sites/prod/files/2014/08/f18/Addendum.pdf.

7 *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas from the United States* (May 2014) , *available at* http://energy.gov/sites/prod/files/2014/05/f16/Life%20Cycle%20GHG%20Perspective%20Report.pdf.

On June 11, 2015, Sierra Club requested rehearing of the Department's Export Order, arguing, in part, that the Department violated NEPA by authorizing LNG export without considering the direct, indirect, and cumulative effects of LNG exports, including a failure to take a hard look at the effects of induced gas production and changes in electricity generation caused by increased domestic gas prices. *Cheniere Marketing, LLC, et al.*, Request for Rehearing of Sierra Club, DOE Docket No. 12-97-LNG (June 11, 2015). Sierra Club's rehearing request is pending before the Department. *Cheniere Marketing, LLC, et al.*, Order Granting Rehearing for Further Consideration, DOE Docket No. 12-97-LNG (July 10, 2015).

SUMMARY OF ARGUMENT

The Commission's comprehensive environmental review, culminating in the 630-page environmental impact statement, of the construction and operation of the Corpus Christi Project satisfied its statutory responsibilities under the National Environmental Policy Act to take a "hard look" at the Project's environmental consequences and to inform the public of its impacts. NEPA does not require the Commission to consider the universe of potential impacts no matter how attenuated or speculative. Accordingly, the Commission reasonably declined to discuss indirect impacts from future, unidentified gas development activities that, in the agency's informed judgment, are neither reasonably foreseeable nor "caused by"

the Project, and would not improve its environmental review. The Commission similarly declined to guess whether and to what extent the export of LNG could impact the use of coal as a fuel source for electric generation in lieu of natural gas.

With respect to Sierra Club's demand that the Commission analyze the cumulative impacts of all LNG projects in the aggregate, the Commission made an informed and reasoned decision that an even more detailed programmatic environmental impact statement, covering the cumulative impacts of all present and future LNG projects scattered throughout the United States, is unnecessary. The Commission's decision is consistent with case law limiting the scope of an agency's cumulative impact analysis to other projects in the same area impacted by the project at issue.

The Commission also sufficiently considered, and reasonably rejected, an alternative design that would replace some or all of the natural gas-powered turbines used to drive compressors on the Terminal's liquefaction train with electric motors. The Commission identified several environmental and design challenges that, given the proposed Project's compliance with air quality standards, supported a conclusion that the alternative was not environmentally preferable.

Finally, the Commission appropriately considered the Project's greenhouse gas emissions, accounting for such emissions both quantitatively and qualitatively, but reasonably concluding that, in its judgment, no appropriate methodology was

available to determine the significance of their impacts on the physical environment.

Where, as here, all the relevant information was provided and analyzed in the Environmental Impact Statement, the Commission fully satisfied its obligations under the National Environmental Policy Act.

ARGUMENT

I. STANDARD OF REVIEW

The Court reviews the substance of Commission actions under the Administrative Procedure Act, overturning disputed orders only if they are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). The Administrative Procedure Act's arbitrary and capricious standard applies to challenges under the National Environmental Policy Act. *See Nevada v. Dep't of Energy*, 457 F.3d 78, 87 (D.C. Cir. 2006). When the Court reviews Commission action taken "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.*, 462 U.S. at 97-98); *see also, e.g.*, *Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301, 1322 (D.C. Cir. 2015) (noting that

FERC's NEPA obligations are "'essentially procedural'") (quoting *Vt. Yankee Nuclear Power Corp. v. Nat. Res. Def. Council, Inc.*, 435 U.S. 519, 558 (1978)). The Commission's findings of fact, if supported by substantial evidence, are conclusive. NGA § 19(b), 15 U.S.C. § 717r(b); *see Nat'l Comm. for the New River*, 373 F.3d at 1327.

Agency action taken pursuant to NEPA is entitled to a high degree of deference. *Marsh v. Or. Nat. Res. Council*, 490 U.S. 360, 377-78 (1989). This Court evaluates agency compliance with NEPA under a "rule of reason" standard. *Theodore Roosevelt Conservation P'ship*, 661 F.3d at 75 (citing *Nevada*, 457 F.3d at 93); *see also Myersville*, 783 F.3d at 1322 (same). This Court consistently declines to "'flyspeck' the agency's [environmental] findings in search of 'any deficiency no matter how minor.'" *Myersville*, 783 F.3d at 1322 (quoting *Nevada*, 457 F.3d at 93, and *Minisink*, 762 F.3d at 112). "As 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." *Nat. Res. Def. Council, Inc. v. Hodel*, 865 F.2d 288, 294 (D.C. Cir. 1988) (quoting *N. Slope Borough v. Andrus*, 642 F.2d 589, 599 (D.C. Cir. 1980)); *accord Transmission Access Policy Study Grp. v. FERC*, 225 F.3d 667, 736 (D.C. Cir. 2000); *see also Robertson*, 490 U.S. at 350 (NEPA prescribes process, but not results).

II. THE COMMISSION'S ANALYSIS COMPLIED WITH THE NATIONAL ENVIRONMENTAL POLICY ACT

A. The Commission Properly Found That Increases In Natural Gas Production Or Coal Consumption Would Not Be Indirect Impacts, Under NEPA, Of The Corpus Christi Project

Consistent with NEPA, the Commission prepared an environmental impact statement for the Corpus Christi Project that addressed the wide range of direct, indirect, and cumulative impacts associated with the construction and operation of the Project. Nevertheless, Sierra Club argues that the Commission violated NEPA by failing to consider all potential impacts that might conceivably flow from the export of domestically produced LNG. *See* Br. 4, 30, 38-42, 50-56. The Commission, however, reasonably concluded that increases, if any, in domestic natural gas production and coal consumption are not indirect impacts, as defined by NEPA regulations and precedent, of the Commission's approval of the Project, because the potential environmental effects "are neither sufficiently causally related to the project to warrant a detailed analysis, nor . . . reasonably foreseeable . . . ." Authorization Order at P 120, JA 1107; *see also* Rehearing Order at PP 23, 33, JA 1161, 1165.

1. There Are No Reasonably Foreseeable Induced Gas Production Activities Tied To The Corpus Christi Project

Sierra Club largely focuses its challenge to the Commission's NEPA analysis not on the environmental impacts of the construction and operation of the Corpus Christi Project facility itself, but on the purported effects of international

LNG exports on domestic natural gas production. *See, e.g.*, Br. 1-2, 4, 30, 34-56. But even if the approval of the Corpus Christi Project were presumed to cause any increase in natural gas production, the scope of the impacts from any such production is not reasonably foreseeable. Rehearing Order at P 14, JA 1157. "An effect is 'reasonably foreseeable' if it is 'sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision.'" *Id.* at P 10, JA 1155 (citing *City of Shoreacres v. Waterworth*, 420 F.3d 440, 453 (5th Cir. 2005), and *Sierra Club v. Marsh*, 976 F.2d 763, 767 (1st Cir. 1992)). With respect to the Corpus Christi Project, how much gas might ultimately be exported, and how much additional upstream production might occur to support its exports, are unknown. *See* Rehearing Order at P 13, JA 1156-57. Moreover, the location and timing of any future production are speculative. *See id.*; EIS at 4-212, JA 768; *see also* Rehearing Order at P 19, JA 1160 (explaining that gas might come to the Corpus Christi facility from shale or conventional production areas located anywhere in the eastern half of the country). Without knowing where, in what quantity, and under what circumstances additional gas production will occur, the environmental impacts resulting from such activity are not "reasonably foreseeable" within the meaning of the NEPA regulations.

Sierra Club's reliance (Br. 36-37) upon *Mid States Coalition for Progress v. Surface Transportation Board*, 345 F.3d 520 (8th Cir. 2003), is misplaced. In that

case, the agency acknowledged that a particular outcome (construction of new coal burning plants resulting from the availability of cheaper coal after the new rail lines were built) was reasonably foreseeable but then failed to consider its impact. *See* 345 F.3d at 549-50 (holding that "when the *nature* of the effect is reasonably foreseeable but its *extent* is not . . . agency may not simply ignore the effect").

Here, the Commission properly found, based on the record before it, that neither the nature *nor* the extent of the effect is reasonably foreseeable. As discussed above, the Commission could not determine that the Project would induce incremental production of natural gas and, even if additional gas is induced, the amount, timing, and location of such development activity is unknown (Rehearing Order at P 13, JA 1156-57) — and, indeed, "unknowable." *Freeport LNG Dev., L.P.*, 149 FERC ¶ 61,119 at P 21 (2014), *on appeal in* D.C. Cir. No. 14-1275. *See generally Nat. Res. Def. Council, Inc. v. Callaway*, 524 F.2d 79, 90 (2d Cir. 1975) (holding that an agency need not "consider other projects so far removed in time or distance from its own that the interrelationship, if any, between them is unknown or speculative").

Also, in contrast to *Mid-States*, the Commission could not determine whether the Corpus Christi Project would increase long-term demand for natural gas or replace other fuel sources. *See* Rehearing Order at P 22, JA 1160-61 (noting that proposed volume to be exported from Corpus Christi Project is less than three

percent of U.S. production, and an even smaller percentage of the global market; also, "given the global nature of the natural gas market, the Commission has no way of predicting where or how" the exported gas would be consumed, "much less what alternative fuel sources it may replace"). Thus, unlike the agency in that case, the Commission did not "simply ignore" (345 F.3d at 549) the impacts of future gas development, as it both explained the absence of causation and determined that insufficient information was available to allow meaningful analysis. Rehearing Order at P 22, JA 1160-61. *See generally Habitat Educ. Ctr. v. U.S. Forest Serv.*, 609 F.3d 897, 902 (7th Cir. 2010) (agency does not fail NEPA's "hard look" by failing to discuss projects too speculative for meaningful discussion) (distinguishing *Mid-States*).

Sierra Club points to various LNG export studies that it contends would enable the Commission to forecast the amount, timing, and location of induced production. *See* Br. 13-15, 41-42, 51-53. The Commission, however, considered those studies and concluded that they "provide only general economic analyses concluding that increased LNG exports may increase domestic natural gas production, but they do not provide specifics that would assist in informing our decision-making process." Rehearing Order at P 14, JA 1157-58; *see also Freeport*, 149 FERC ¶ 61,119 at P 20 (explaining that studies by NERA Consulting, Deloitte, and the Energy Information Administration "provide general

economic analyses concluding that increased LNG exports may increase domestic natural gas production, but they do not provide specificity that would assist in informing the Commission's decision[s]" as to specific LNG projects). Though NEPA requires "reasonable forecasting," it does not require the Commission "to do the impractical, if not enough information is available to permit meaningful consideration." *N. Plains Res. Council v. Surface Transp. Bd.*, 668 F.3d 1067, 1078 (9th Cir. 2011), *cited in* Rehearing Order at P 10, JA 1155.

For example, the Commission determined that the U.S. Energy Information Administration's National Energy Modeling System, though useful in projecting market responses to energy programs and policies, is "not intended for predicting or analyzing the environmental impacts of specific infrastructure projects." Rehearing Order at P 15 & n.30, JA 1158 (citing the Energy Information Administration's "Overview" of its model, at http://www.eia.gov/forecasts/aeo/nems/overview/pdf/0581(2009).pdf). Sierra Club disputes this conclusion, contending that the Overview "provides no indication that the model is unsuited for this purpose" (Br. 52), but the document itself supports the Commission's reading, with its broad focus on markets and policy initiatives rather than individual projects.[8]

[8] Nor does *Mayo Foundation v. Surface Transportation Board*, 472 F.3d 545 (8th Cir. 2006), which Sierra Club cites (Br. 41-42, 52), undermine the

Sierra Club also contends that the Department of Energy "has endorsed" the 2012 Export Study's energy market predictions. Br. 42. But the Commission pointed to the Department of Energy's own qualification as to its economic estimates:

> While [the Department] has made broad projections about the types of resources from which additional production may come, it cannot meaningfully estimate where, when, or by what method any additional natural gas would be produced. Therefore, [the Department] cannot meaningfully analyze the specific environmental impacts of such production, which are nearly all local or regional in nature. . . . [L]acking an understanding of where and when additional gas production will arise, the environmental impacts resulting from production activity induced by LNG exports . . . are not 'reasonably foreseeable' within the meaning of . . . NEPA regulations.

Environmental Addendum at 2, *quoted* in Rehearing Order at P 16, JA 1158-59; *see also* EIS at 4-212, JA 768. Therefore, the Commission reasonably found that the Addendum's "general estimates about the environmental impacts associated with natural gas production," which have "no particular relationship" to the specific project proposal before the Commission, do not assist in its analysis. Rehearing Order at P 16, JA 1158. Similarly, another study, by ICF International

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Commission's judgment. There, the agency chose to use the modeling system to predict the national and regional extent of an effect that the agency had already determined was foreseeable in nature (arising from the same project that was at issue in *Mid States*, discussed *supra*). *See* 472 F.3d at 555. But the agency found the model could not be used to predict local impacts of the project, which it (again) found to be speculative and unforeseeable. *See id.* at 555-56. The court rejected Sierra Club's "meritless" challenge to that finding. *Id.* at 556.

(*cited at* Br. 52), projected that increased LNG exports might lead to increased gas production in certain regions, but did not predict that its estimates would be reflected as to the sources of gas processed by any particular export facility. *See* Rehearing Order at P 15, JA 1158.

Accordingly, the Commission reasonably concluded that these studies' "general economic projections" about future gas production activities would not meaningfully contribute to the Commission's consideration of the environmental impacts of its decision to authorize construction and operation of this specific LNG facility. Rehearing Order at P 17, JA 1159 (such analyses "do not assist us in reasonably estimating how much of Corpus Christi LNG Project's export volumes will come from current versus future natural gas production, or where and when the future production may specifically be located, much less any associated environmental impacts of such production"). *See Coal. on Sensible Transp., Inc. v. Dole*, 826 F.2d 60, 66 (D.C. Cir. 1987) (Because the NEPA process "involves an almost endless series of judgment calls . . . [t]he line-drawing decisions . . . are vested in the agencies, not the courts"); *accord WildEarth Guardians v. Jewell*, 738 F.3d 298, 312 (D.C. Cir. 2013).

2. The Commission Also Appropriately Concluded That Any Impacts On Changes In Electricity Generation Are Not Reasonably Foreseeable

For all the reasons stated above, Sierra Club's secondary argument (Br. 37-42), related to alleged increases in domestic coal consumption stemming from the impact LNG exports may have on domestic gas prices, also fails. *See* Rehearing Order at P 33, JA 1165 (any change in the use of coal for electric generation is too "attenuated" and "highly speculative" to be reasonably foreseeable); *see Sierra Club v. Froehlke*, 486 F.2d 946, 951 (7th Cir. 1973) (NEPA does not require that "each problem be documented from every angle").

Sierra Club argues that economic studies regarding LNG exports (discussed *supra* at pp. 23-26) have predicted that increased exports will cause domestic electricity generators to decrease natural gas consumption and substitute the use of coal. *See* Br. 38. The Energy Information Administration, however, cautioned in its 2012 Export Study that long-term energy market projections are "highly uncertain" for various reasons. 2012 Export Study at 3 (projections are "subject to many events that cannot be foreseen, such as supply disruptions, policy changes, and technological breakthroughs"), *cited in* Rehearing Order at P 33, JA 1165. In addition, the Study was updated in October 2014, with projections to 2040, with the caveat that it was "intended to show an outer envelope of domestic production and consumption responses" for an "extremely aggressive, indeed almost

impossible" scenario of ramped-up exports. U.S. Energy Information Admin., Effect of Increased Levels of Liquefied Natural Gas Exports on U.S. Energy Markets at 5 (Oct. 2014) ("Updated Export Study"), *available at* http://www.eia.gov/analysis/requests/fe/pdf/lng.pdf, *quoted in* Rehearing Order at P 33, JA 1165. The Updated Export Study pointed to a separate document, Annual Energy Outlook 2014, which "best reflects [the Administration's] view on LNG exports and U.S. natural gas markets more generally." Updated Export Study at 13. That Outlook notes that the future of coal-fired generation depends on many variables, including implementation of EPA standards for power plants, actions to reduce greenhouse gas emissions, and fuel prices. EIA Annual Energy Outlook 2014 at MT-32, MT-33, available at http://www.eia.gov/forecasts/aeo/pdf/0383(2014).pdf, *cited in* Rehearing Order at P 33 nn.59, 63, JA 1165. The Commission found it "more plausible that these factors would play the greater role in any decision by the domestic power sector to shift from natural gas to coal as a base fuel." Rehearing Order at P 33, JA 1165. Thus, Sierra Club's demand that the Commission analyze potential impacts from a hypothetical increase in coal use would require the Commission to engage in "speculation upon speculation" that is not required by NEPA. *Id.*

3. There Is No Causal Link Between The Commission's Approval Of The Corpus Christi Project And Increased Gas Production

Furthermore, the impacts of conjectural increases in natural gas production are outside the scope of NEPA review because they are not "caused by" the construction or operation of the Project. For NEPA purposes, an indirect impact must be "caused by" the proposed action. 40 C.F.R. § 1508.8(b) (defining "indirect effects"); *see also* Authorization Order at P 119, JA 1107 ("For an agency to include consideration of an impact in its NEPA analysis as an indirect effect, approval of the proposed project and the related secondary effect must be causally related, i.e., the agency action and the effect must be 'two links of a single chain.'") (quoting *Sylvester v. U.S. Army Corps of Eng'rs*, 884 F.2d 394, 400 (9th Cir. 1980)). But a simple "'but for' causal relationship is insufficient to make an agency responsible for a particular effect under NEPA . . . ." *Public Citizen*, 541 U.S. at 767; *accord Shoreacres*, 420 F.3d at 452 (explaining that "proximate cause" standard applies); *see also City of Dallas v. Hall*, 562 F.3d 712, 719 (5th Cir. 2009) (same); *Ohio Valley Envtl. Coal. v. Aracoma Coal Co.*, 556 F.3d 177, 196 (4th Cir. 2009) (same).

Moreover, where an agency has no ability to prevent a particular effect because it has limited (if any) statutory authority over the relevant actions, it is unlikely that agency's action can be the "legally relevant cause" of the effect.

Public Citizen, 541 U.S. at 768-69; *see also Shoreacres*, 420 F.3d at 452 ("it is doubtful that an environmental effect may be considered as proximately caused by the action of a particular federal regulator if that effect is directly caused by the action of another government entity over which the regulator has no control"); Rehearing Order at P 12, JA 1156 (citing both cases).

In *Public Citizen*, the Supreme Court upheld the agency's decision not to consider in its environmental analysis for new safety regulations governing Mexican motor carriers — a precursor to re-opening the United States to Mexican truck traffic — the potential environmental impacts of an increased number of Mexican trucks on U.S. roads. *See* 541 U.S. at 767-69. The Court agreed with the agency's finding that, because the President (not the agency) would decide whether to allow the entry of Mexican trucks, there was no reasonably close causal relationship between the increased number of trucks and the proposed safety regulations. *Id.* (noting that requiring the agency to consider broader effects would not provide "useful" information that would assist with informed decision-making). Likewise, in *Shoreacres*, the court determined that an agency's approval of construction of a port terminal would not be the "cause" of any future deepening of a shipping channel, which would require an act of Congress. 420 F.3d at 452.

Similarly, the Commission's certification of an LNG import/export facility is not the legally relevant cause of any potential increase in gas production — the

Commission "has no jurisdiction over the production and development of domestic natural gas," which is regulated by state and local governments. Rehearing Order at P 12, JA 1156; *see also* Authorization Order at P 120, JA 1107 (noting that the siting and timing of wells and gathering lines are subject to local permitting authorities). Indeed, that jurisdictional limitation was significant even where the Commission authorized a project that would connect an interstate gas pipeline to a specific area where shale development was occurring. *See Cent. N.Y. Oil & Gas Co.*, 138 FERC ¶ 61,104 at P 37 (finding no causal connection between pipeline and shale gas production "because the Commission plays no role in, nor retains any control over" well development), *aff'd*, *Coal. for Responsible Growth & Res. Conservation v. FERC*, 485 F. App'x 472, 474 (2d Cir. 2012) (summary order) ("FERC reasonably concluded that the impacts of that [shale gas] development are not sufficiently causally-related to the project to warrant a more in-depth [NEPA] analysis"). Nor does the Commission have the statutory authority to approve or disapprove the export of commodity natural gas; those determinations are the responsibility of the Department of Energy. Rehearing Order at P 13 n.28, JA 1157; Authorization Order at P 20, JA 1076. For that reason, the Commission's decision also would not be the cause, for NEPA purposes, of any LNG exports.

Accordingly, like the federal action at issue in *Public Citizen* (as well as *Shoreacres* and *Central New York*/*Coalition*), the Commission's decision to

authorize construction and operation of the Corpus Christi Project is not the legally relevant cause of any future incremental increases in natural gas production or international exports. Sierra Club's effort to distinguish *Public Citizen* (Br. 43, 47) falls short. Sierra Club does not dispute that gas production and exports are regulated by other entities and not by the Commission, but it brushes off those jurisdictional lines as "some related authority" while denying (incorrectly) that the Commission's statutory authority is "limited." Br. 47; *but see supra* p. 6 (discussing Commission's authority under NGA section 3, 15 U.S.C. § 717b).[9] Ultimately, Sierra Club resorts to mere "but for" causation (*see* Br. 45-46), ignoring the Supreme Court's explicit rejection of that standard. *See Public Citizen*, 541 U.S. at 767 (discussing "but for" versus "proximate cause") (citing *Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 (1983)).

Furthermore, even aside from the legal standard, any causal connections between the Commission's action and the purported impacts fail on the facts, as there is no record evidence that any increase in natural gas production is attributable to the Corpus Christi Project. *See* Rehearing Order at P 13, JA 1156. The Commission noted that "no specific shale play has been identified as a source"

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[9] Moreover, that limitation is defined by statute, not by self-imposed regulatory constraints. *Contra Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1213 (9th Cir. 2008), *and Sierra Club v. Mainella*, 459 F. Supp. 2d 76, 105 (D.D.C. 2006), *cited in* Br. 48.

for the Project and that it "does not depend on additional shale gas production . . . ." EIS at 4-212, -213, JA 768, 769. The Commission also could not estimate how much, if any, of the export volumes will come from current production or from new production. Rehearing Order at P 13, JA 1156-57. Indeed, because the pipelines that interconnect with the Project "span an area from Texas to Illinois to Pennsylvania," crossing areas of both conventional and shale production, "the location and extent of potential subsequent production activity are unknown and too speculative" to inform the NEPA analysis. *Id.*; *see also id.* at P 19, JA 1160 (gas could come to the Corpus Christi Project "from shale or conventional gas plays located anywhere in the eastern half of the United States"); EIS at 4-213, JA 769 (same). Moreover, "a number of factors, such as natural gas prices, production costs, and transportation alternatives, drive new drilling" as well as export markets. Rehearing Order at P 13, JA 1157; *see id.* n.29 (citing *Rockies Express Pipeline LLC*, 150 FERC ¶ 61,161 at P 39 (2015)).

These unknowns stand in contrast to *City of Davis v. Coleman*, 521 F.2d 661 (9th Cir. 1975), where the court found evidence that the federal action (a highway interchange) was being built "to stimulate and serve future industrial development" and was an "indispensable prerequisite to rapid development" of the immediate area. *Id.* at 667, 674. Similarly, the road construction approved in *High Country Conservation Advocates v. U.S. Forest Service*, 52 F. Supp. 3d 1174 (D. Colo.

2014), was "explicitly intended to facilitate additional coal production" in a "defined" area. Rehearing Order at P 19, JA 1159-60 (discussing *High Country*). Here, by contrast, the Corpus Christi Project is being built to serve interchangeably as an import or export terminal, "depending on market dynamics" (EIS at 1-6, JA 474), and, when operating as an export terminal, to take advantage of existing supplies of natural gas and planned production. *See* Rehearing Order at P 19, JA 1159-60; *see also* EIS at 4-212, -213, JA 768, 769. *Cf., e.g., Morongo Band of Mission Indians v. FAA*, 161 F.3d 569, 580 (9th Cir. 1998) (environmental analysis need not discuss growth-inducing impact — increased air traffic — of an airport improvement project where project was implemented to deal with existing problems).

Thus, the Commission reasonably, and consistent with applicable case law, concluded that future unidentified natural gas development activities are not sufficiently causally-related to the Project to warrant consideration of the potential impacts stemming from such gas production. *Cf. generally Transmission Access Policy Study Grp.*, 225 F.3d at 736 (affording deference to agency's considered decisionmaking).

B. The Commission Reasonably Limited The Scope Of Its Cumulative Impacts Analysis To The Project Region

NEPA regulations, issued by the Council on Environmental Quality, define "cumulative impact" to mean "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." 40 C.F.R. § 1508.7. As with indirect impacts, cumulative effects "need not be discussed [in the environmental analysis] if they are remote and highly speculative." Rehearing Order at P 25, JA 1162. *See, e.g.*, *Habitat Educ. Ctr.*, 609 F.3d at 902 (rejecting standard that would require agency to discuss projects "so nebulous that the agency cannot forecast [the] likely effects" or "so speculative that [the agency] can say nothing meaningful about . . . cumulative effects"), *cited in* Authorization Order at P 120 n.122, JA 1107.

Thus, just as the Commission reasonably found that induced gas production is too speculative to constitute an indirect impact of the Project, as discussed *supra* in Part A.1, it likewise appropriately found such production too speculative to require analysis as to cumulative effects. *See* Rehearing Order at PP 29-31, JA 1163-64; EIS at 4-212 to -213, JA 768-69. Because the pipelines that interconnect with the Corpus Christi Project span much of the country, from Texas to Illinois to Pennsylvania, crossing areas of both shale and conventional gas production, even broadly expanding the considered area would require the Commission to guess at "the exact location, scale, scope, and timing of future production-related facilities" — a "speculative analysis [that] would not provide meaningful information" for the Commission's decisionmaking. Rehearing Order at P 29, JA 1163-64; *see also id.* at P 30, JA 1164 (contrasting *N. Plains Res.*

Council, 668 F.3d 1067, where agency considering rail line had such information regarding future coal bed methane well development); EIS at 4-213, JA 769.

Sierra Club argues that the cumulative effects analysis must include all proposed and approved LNG export facilities across the United States. *See* Br. 54-56. The Commission rejected that scope: "What Sierra Club is requesting, in essence, is that the Commission conduct a programmatic NEPA review of natural gas development and production." Rehearing Order at P 27, JA 1163. The Commission, however, has repeatedly explained that it does not have a "program or policy to promote additional production or export of, or increased reliance on, natural gas." *Id.*; *accord Tennessee Gas Pipeline Co., L.L.C., et al.*, 150 FERC ¶ 61,160 at P 54 (2015) ("There is no Commission plan or policy to promote the unconventional production of, or increase reliance on, natural gas."); *see also Sabine Pass Liquefaction Expansion, LLC, et al.*, 151 FERC ¶ 61,012 at P 107 (2015); *Texas E. Transmission, LP*, 149 FERC ¶ 61,259 at PP 43-47 (2014); *Cameron LNG, LLC*, 147 FERC ¶ 61,230 at PP 70-72 (2014). Rather, the Commission's practice is to consider each project application on its own merits. *See* Rehearing Order at P 27, JA 1163; *Sabine Pass*, 151 FERC ¶ 61,012 at P 107. *See generally Nat. Res. Def. Council*, 865 F.2d at 294 (agency's policy judgments are entitled to judicial deference).

Nevertheless, the Commission did consider the potential environmental impacts of a number of projects in the general vicinity of the Corpus Christi Project, as well as three existing, proposed, or planned LNG terminals and projects within 300 miles of the Project. *See* Rehearing Order at P 28 & n.56, JA 1163; EIS at 4-213 to -218, JA 769-74 (projects in vicinity); EIS at 4-218 to -219, JA 774-75 (other LNG facilities).[10] The Commission's broad consideration of regional cumulative impacts satisfied NEPA's requirements. *Cf. Marsh*, 490 U.S. at 376-77 (agencies retain substantial discretion as to the extent of the inquiry for a cumulative impacts analysis); *N. Slope Borough*, 642 F.2d at 601 (court applies rule of reason to determine adequacy of cumulative impacts study).

C. The Commission Properly Considered And Rejected An Alternative Design That Would Replace Some Gas Turbines With Electric Motors

The Commission also met its obligation to "'rigorously explore and objectively evaluate' the projected environmental impacts of all 'reasonable alternatives' to the proposed action." *Nevada v. Dep't of Energy*, 457 F.3d 78, 87 (D.C. Cir. 2006). "An alternative is reasonable if it is objectively reasonable as well as reasonable in light of [the agency's] objectives." *Myersville*, 783 F.3d at

[10] Among the projects considered was the Freeport Liquefaction Project in Brazoria County, Texas, more than 150 miles from the Corpus Christi Project. The Commission's previous approval of that project is the subject of a similar NEPA challenge by Sierra Club in D.C. Cir. No. 14-1275.

1323 (internal quotations omitted) (citing *Theodore Roosevelt Conservation P'ship*, 661 F.3d at 72). *See also* 40 C.F.R. § 1505.2(b) (environmental impact statement must "[i]dentify all alternatives considered by the agency in reaching its decision, specifying the alternative or alternatives which were considered to be environmentally preferable. An agency may discuss preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions. . . .").

The Environmental Impact Statement evaluated seven alternatives to the proposed terminal facilities and four alternatives to the pipeline facilities (including no-action alternative, energy alternatives, system alternatives, alternative designs, and alternative sites and pipeline routes). *See* EIS at 3-1 to -33, JA 523-55. On appeal, Sierra Club challenges the Commission's analysis as to only one: the use of electric motors instead of gas turbines to drive the liquefaction compressors.[11]

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[11] In the Environmental Impact Statement, the Commission considered an alternative design (which Sierra Club had raised) that would replace all eighteen gas turbines with electric motors. *See* EIS at 3-21 to -22, JA 543-44; Comments [of Sierra Club] on Draft Environmental Impact Statement at 16-18, R. 246, JA 354-56.

On rehearing, Sierra Club suggested for the first time that the Commission should consider an alternative that would replace only six of the eighteen compressors with electric ones. Request for Rehearing at 15, JA 1145. *See Public Citizen*, 541 U.S. at 764-65 (parties forfeit objections, including as to alternatives,

Sierra Club argues that the Commission failed to consider the environmental benefits of the electric alternative and to weigh those benefits against the negatives. *See* Br. 57-58. The Commission, however, provided ample reasons for its conclusion that electric motors were not "an environmentally preferable alternative" for the Corpus Christi Project. EIS at 3-22, JA 544; Rehearing Order at P 48, JA 1171.

First, the Commission determined that "the reliability necessary to sustain base load LNG production has not been demonstrated" sufficiently to support recommending electric motors as preferable to the proposed gas turbines. Rehearing Order at P 44, JA 1170; *see also* EIS at 3-22, JA 544 (noting that electric motors to drive LNG refrigeration compressors were then in operation at only one LNG facility, in Norway). The Commission also explained why its prior approval of electric motors for the Freeport facility (which was not yet in operation) did not support finding them to be a preferable alternative at Corpus Christi. In particular, the proposed Terminal, unlike the Freeport facility, is not in

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where they fail to alert agency to their positions); *Vt. Yankee*, 435 U.S. at 553 (same); *cf. WildEarth Guardians*, 738 F.3d at 310 (finding "the last-ditch, kitchen-sink nature" of suggested alternatives to be relevant to the extent of the agency's obligation to address them). Nevertheless, the Rehearing Order addressed this new argument, noting that a "mixed-run liquefaction train (part electric driven and part gas-driven)" would entail the same negative impacts as the all-electric alternative. Rehearing Order at P 44, JA 1170.

an area that is subject to more restrictive requirements under applicable air quality standards. Rehearing Order at P 44, JA 1170; *see also id.* at P 45 & nn.86-87, JA 1170 (explaining differences in facility footprints and site- and project-specific factors); *id.* at P 47, JA 1171 (noting that the Environmental Impact Statement included air quality modeling that demonstrated compliance with all applicable modeling standards) (citing EIS, sec. 4.11.1, JA 650).

In addition, at Corpus Christi, the alternative design would require construction of a high-voltage electric transmission line, approximately seven miles long (entailing new or expanded rights-of-way), as well as expansion of a nearby substation and other system upgrades, to supply the necessary electricity — resulting in additional impacts on people, wildlife, and vegetation. *See* Rehearing Order at P 46, JA 1170-71; EIS at 3-21 to -22, JA 543-44; *see also id.* at 3-21, JA 543 (noting that use of electric motors would result in pollution and greenhouse gas emissions from power plants supplying the incremental electricity). The electric alternative also "would further complicate an already complex design" for the Corpus Christi facility, requiring variable frequency drive systems and water cooling. Rehearing Order at P 44, JA 1170; *see also* EIS at 3-22, JA 544 (addition of variable frequency drive systems "would require construction of an additional large building adjacent to each LNG train to house the . . . system"). For all of these reasons, the Commission reasonably found that "a more in-depth comparison

of air quality emissions [between the proposed design and alternative designs] would not help to inform the Commission's decision" because the potential emission reductions — not mandated by any air quality standard — would not outweigh "the many environmental and design challenges . . . ." Rehearing Order at PP 46-47, JA 1171.

Though Sierra Club, on appeal, challenges both the Commission's stated reservations about reliability and the evidentiary support for the cited drawbacks (Br. 60), it failed to raise these arguments in its rehearing request before the Commission; therefore, they are jurisdictionally barred. Natural Gas Act § 19(b), 15 U.S.C. § 717r(b). In any event, Sierra Club's objections "are of the flyspecking variety" (*WildEarth Guardians*, 738 F.3d at 309) and do not merit further analysis. The Commission's multifaceted consideration of the impacts of changing the facility design satisfied NEPA's requirements. *Cf. WildEarth Guardians*, 738 F.3d at 310 (court generally applies "a deferential 'rule of reason' to govern 'both *which* alternatives the agency must discuss, and the *extent* to which it must discuss them'") (citations omitted).

D. The Commission Reasonably Analyzed The Project's Greenhouse Gas Emissions

The Commission also fulfilled its obligation to consider the Project's potential impacts on climate change. The Commission estimated the emissions associated with the Project and found that those emissions, together with emissions

from certain other sources, would incrementally increase atmospheric concentrations of greenhouse gases in the Project's region. EIS at 4-232, JA 788; *see also id.* at 4-230, JA 786 ("Project operations would increase [carbon dioxide] emissions in Texas by approximately 0.5 percent"); Rehearing Order at P 50, JA 1172 (same); *see generally* EIS at 4-94 to -129, JA 650-85 (detailing projected emissions and impacts on air quality standards). The Commission, however, found that it could not determine whether the Project's incremental contribution would result in physical effects on the environment because "there is no standard methodology" for such a determination. Authorization Order at P 122, JA 1108; EIS at 4-232, JA 788; *see also* Rehearing Order at P 50, JA 1172. Therefore, the Commission could not "determine whether or not the Project's contribution to cumulative impacts on climate change would be significant." Rehearing Order at P 50, JA 1172; Authorization Order at P 122, JA 1108; EIS at 4-232, JA 788.

Sierra Club argues that the Commission was required to go further: specifically, that the Commission should have used one of two methods that Sierra Club advocated: the "social cost of carbon" or measurement against federal greenhouse gas emission reduction targets. *See* Br. 65-73.

The social cost of carbon refers to a calculation developed by the EPA to provide monetized value, on a global level, of addressing climate change impacts. *See* Rehearing Order at P 51, JA 1172; *see generally Fact Sheet: Social Cost of*

Carbon (Nov. 2013), *available at* http://www3.epa.gov/climatechange/Downloads/EPAactivities/SCC-Fact-Sheet.pdf. The tool's intended purpose is to estimate the climate benefits of rulemaking and policy alternatives using cost/benefit analyses; the Commission found that it "would not be appropriate or informative" for assessing the impacts of a specific infrastructure project or for informing the Commission's NEPA evaluation. Rehearing Order at P 51, JA 1172. First, because there is (by EPA's own account) no consensus as to the appropriate discount rate for an analysis decades into the future, calculations can vary significantly. *See id.* (citing *Fact Sheet*, *supra*). Second, "the tool does not measure the actual incremental impacts of a project on the environment[.]" Rehearing Order at P 51, JA 1172. Third, even if impacts were monetized using the calculator, "there are no established criteria" for what values would be considered significant for NEPA purposes. *Id.*

Sierra Club disputes the Commission's judgment, pointing to a district court decision requiring the Forest Service to use the social cost of carbon in its NEPA analysis. Br. 68 (discussing *High Country*, 52 F. Supp. 3d at 1190-91). There, the agency had used the social cost of carbon calculation in its draft environmental impact statement, then omitted it from the final statement without explaining why the tool was not appropriate for the analysis. *Id.* at 1190-91; *but see id.* at 1190 (court acknowledged that the tool is "provisional" and designed for cost-benefit

analyses in rulemakings). Here, by contrast, the Commission explained its reasoning. *See* Rehearing Order at P 51, JA 1172. Moreover, "though NEPA does not require a cost-benefit analysis" (52 F. Supp. 3d at 1191), the Forest Service had explicitly relied on the quantified economic benefits of its action even as it disclaimed any quantification of costs. *See id.* at 1191-92. Similarly, in *Center for Biological Diversity*, the Ninth Circuit rebuked an agency for failing to account for the benefits of carbon emissions reduction — "whether quantitatively or qualitatively" — in the context of a cost-benefit analysis that extensively quantified the countervailing costs. 538 F.3d at 1200.

Here, however, the Commission accounted for greenhouse gas emissions both qualitatively and quantitatively (and not in a monetized cost-benefit context), even though it ultimately concluded there was no appropriate methodology to gauge the significance of their impacts on the physical environment. *See* EIS at 4-230 to -232, JA 786-88; *see also id.* at 4-94 to -129, JA 650-85; Rehearing Order at PP 50, 52, JA 1172-73 (specifying the relevant analyses in the Environmental Impact Statement). Another court recently upheld a similar NEPA analysis by the Forest Service, finding that the agency explained its rationale for declining to use the social cost of carbon tool and "qualitative[ly] discuss[ed]" climate change impacts. *League of Wilderness Defenders/Blue Mtns. Biodiversity Proj. v.*

Connaughton, Case No. 3:12-cv-02271-HZ, 2014 WL 6977611 at *26-*27 (D. Or. Dec. 9, 2014) (distinguishing *High Country*), *appeal pending*.

With regard to greenhouse gas emission reduction targets, the Commission noted that the Council on Environmental Quality had issued its *Revised Draft Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in NEPA Reviews*[12] more than two months after the Commission issued the Final Environmental Impact Statement and only days before it issued the Authorization Order. Rehearing Order at P 52, JA 1172. Nevertheless, the Commission concluded that the Final Environmental Impact Statement — by quantifying estimates of greenhouse gases, discussing alternatives or mitigation measures to improve efficiency and/or emissions, comparing state greenhouse gas emissions, discussing climate change impacts in the Project region, and considering resiliency alternatives/measures — was consistent with the Revised Draft Guidance. Rehearing Order at P 52, JA 1172-73. NEPA requires no more. *See, e.g.*, *Robertson*, 490 U.S. at 350 (NEPA prescribes process, but not results).

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[12] *Available at* http://energy.gov/sites/prod/files/2014/12/f19/CEQ%20Guidance%20on%20Greenhouse%20Gas%20Emissions%20-%20Revised%20Draft%20for%20Public%20Comment2014-30035.pdf.

CONCLUSION

For the reasons stated, the petition should be denied and the challenged FERC Orders should be affirmed.

Respectfully submitted,

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November 12, 2015
Final Brief: January 12, 2016

CERTIFICATE OF COMPLIANCE

In accordance with Fed. R. App. P. 32(a)(7)(C)(i), I certify that the Final Brief for Respondent has been prepared in a proportionally spaced typeface (using Microsoft Word 2010, in 14-point Times New Roman) and contains 10,227 words, not including the tables of contents and authorities, the glossary, the certificates of counsel, and the addendum.

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January 12, 2016

ADDENDUM

STATUTES
AND
REGULATIONS

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§ 7144e. Office of Indian Energy Policy and Programs

(a) Establishment

There is established within the Department an Office of Indian Energy Policy and Programs (referred to in this section as the ''Office''). The Office shall be headed by a Director, who shall be appointed by the Secretary and compensated at a rate equal to that of level IV of the Executive Schedule under section 5315 of title 5.

(b) Duties of Director

The Director, in accordance with Federal policies promoting Indian self-determination and the purposes of this chapter, shall provide, direct, foster, coordinate, and implement energy planning, education, management, conservation, and delivery programs of the Department that—

(1) promote Indian tribal energy development, efficiency, and use;

(2) reduce or stabilize energy costs;

(3) enhance and strengthen Indian tribal energy and economic infrastructure relating to natural resource development and electrification; and

(4) bring electrical power and service to Indian land and the homes of tribal members located on Indian lands or acquired, constructed, or improved (in whole or in part) with Federal funds.

(Pub. L. 95–91, title II, § 217, as added Pub. L. 109–58, title V, § 502(a), Aug. 8, 2005, 119 Stat. 763.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original ''this Act'', meaning Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565, as amended, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

SUBCHAPTER III—TRANSFERS OF FUNCTIONS

§ 7151. General transfers

(a) Except as otherwise provided in this chapter, there are transferred to, and vested in, the Secretary all of the functions vested by law in the Administrator of the Federal Energy Administration or the Federal Energy Administration, the Administrator of the Energy Research and Development Administration or the Energy Research and Development Administration; and the functions vested by law in the officers and components of either such Administration.

(b) Except as provided in subchapter IV of this chapter, there are transferred to, and vested in, the Secretary the function of the Federal Power Commission, or of the members, officers, or components thereof. The Secretary may exercise any power described in section 7172(a)(2) of this title to the extent the Secretary determines such power to be necessary to the exercise of any function within his jurisdiction pursuant to the preceding sentence.

(Pub. L. 95–91, title III, § 301, Aug. 4, 1977, 91 Stat. 577.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original ''this Act'', meaning Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565, as amended, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

EMERGENCY PREPAREDNESS FUNCTIONS

For assignment of certain emergency preparedness functions to the Secretary of Energy, see Parts 1, 2, and 7 of Ex. Ord. No. 12656, Nov. 18, 1988, 53 F.R. 47491, set out as a note under section 5195 of this title.

EX. ORD. NO. 12038. TRANSFER OF CERTAIN FUNCTIONS TO SECRETARY OF ENERGY

Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957, as amended by Ex. Ord. No. 12156, Sept. 10, 1979, 44 F.R. 53073, provided:

By virtue of the authority vested in me as President of the United States of America, in order to reflect the responsibilities of the Secretary of Energy for the performance of certain functions previously vested in other officers of the United States by direction of the President and subsequently transferred to the Secretary of Energy pursuant to the Department of Energy Organization Act (91 Stat. 565; 42 U.S.C. 7101 et seq.) it is hereby ordered as follows:

SECTION 1. *Functions of the Federal Energy Administration*. In accordance with the transfer of all functions vested by law in the Federal Energy Administration, or the Administrator thereof, to the Secretary of Energy pursuant to Section 301(a) of the Department of Energy Organization Act [subsec. (a) of this section], hereinafter referred to as the Act, the Executive Orders and Proclamations referred to in this Section, which conferred authority or responsibility upon the Administrator of the Federal Energy Administration, are amended as follows:

(a) Executive Order No. 11647, as amended [formerly set out as a note under 31 U.S.C. 501], relating to Federal Regional Councils, is further amended by deleting ''The Federal Energy Administration'' in Section 1(a)(10) and substituting ''The Department of Energy'', and by deleting ''The Deputy Administrator of the Federal Energy Administration'' in Section 3(a)(10) and substituting ''The Deputy Secretary of Energy''.

(b) Executive Order No. 11790 of June 25, 1974 [set out as a note under 15 U.S.C. 761], relating to the Federal Energy Administration Act of 1974, is amended by deleting ''Administrator of the Federal Energy Administration'' and ''Administrator'' wherever they appear in Sections 1 through 6 and substituting ''Secretary of Energy'' and ''Secretary'', respectively, and by deleting Section 7 through 10.

(c) Executive Order No. 11912, as amended [set out as a note under 42 U.S.C. 6201], relating to energy policy and conservation, and Proclamation No. 3279, as amended [set out as a note under 19 U.S.C. 1862], relating to imports of petroleum and petroleum products, are further amended by deleting ''Administrator of the Federal Energy Administration'', ''Federal Energy Administration'', and ''Administrator'' (when used in reference to the Federal Energy Administration) wherever those terms appear and by substituting ''Secretary of Energy'', ''Department of Energy'', and ''Secretary'', respectively, and by deleting ''the Administrator of Energy Research and Development'' in Section 10(a)(1) of Executive Order No. 11912, as amended.

SEC. 2. *Functions of the Federal Power Commission*. In accordance with the transfer of functions vested in the Federal Power Commission to the Secretary of Energy pursuant to Section 301(b) of the Act [subsec. (b) of this section], the Executive Orders referred to in this Section, which conferred authority or responsibility upon the Federal Power Commission, or Chairman thereof, are amended or modified as follows:

(a) Executive Order No. 10485 of September 3, 1953, [set out as a note under 15 U.S.C. 717b], relating to certain facilities at the borders of the United States is amended by deleting Section 2 thereof, and by deleting

''Federal Power Commission'' and ''Commission'' wherever those terms appear in Sections 1, 3 and 4 of such Order and substituting for each ''Secretary of Energy''.

(b) Executive Order No. 11969 of February 2, 1977 [formerly set out as a note under 15 U.S.C. 717], relating to the administration of the Emergency Natural Gas Act of 1977 [formerly set out as a note under 15 U.S.C. 717], is hereby amended by deleting the second sentence in Section 1, by deleting ''the Secretary of the Interior, the Administrator of the Federal Energy Administration, other members of the Federal Power Commission and in Section 2, and by deleting ''Chairman of the Federal Power Commission'' and ''Chairman'' wherever those terms appear and substituting therefor ''Secretary of Energy'' and ''Secretary'', respectively.

(c) Paragraph (2) of Section 3 of Executive Order No. 11331, as amended [formerly set out as a note under 42 U.S.C. 1962b], relating to the Pacific Northwest River Basins Commission, is hereby amended by deleting ''from each of the following Federal departments and agencies'' and substituting therefor ''to be appointed by the head of each of the following Executive agencies'', by deleting ''Federal Power Commission'' and substituting therefor ''Department of Energy'', and by deleting ''such member to be appointed by the head of each department or independent agency he represents,''.

SEC. 3. *Functions of the Secretary of the Interior*. In accordance with the transfer of certain functions vested in the Secretary of the Interior to the Secretary of Energy pursuant to Section 302 of the Act [42 U.S.C. 7152], the Executive Orders referred to in this Section, which conferred authority or responsibility on the Secretary of the Interior, are amended or modified as follows:

(a) Sections 1 and 4 of Executive Order No. 8526 of August 27, 1940, relating to functions of the Bonneville Power Administration, are hereby amended by substituting ''Secretary of Energy'' for ''Secretary of the Interior'', by adding ''of the Interior'' after ''Secretary'' in Sections 2 and 3, and by adding ''and the Secretary of Energy,'' after ''the Secretary of the Interior'' wherever the latter term appears in Section 5.

(b) Executive Order No. 11177 of September 16, 1964, relating to the Columbia River Treaty, is amended by deleting ''Secretary of the Interior'' and ''Department of the Interior'' wherever those terms appear and substituting therefor ''Secretary of Energy'' and ''Department of Energy'', respectively.

SEC. 4. *Functions of the Atomic Energy Commission and the Energy Research and Development Administration*.

(a) In accordance with the transfer of all functions vested by law in the Administrator of Energy Research and Development to the Secretary of Energy pursuant to Section 301(a) of the Act [subsec. (a) of this section] the Executive Orders referred to in this Section are amended or modified as follows:

(1) All current Executive Orders which refer to functions of the Atomic Energy Commission, including Executive Order No. 10127, as amended; Executive Order No. 10865, as amended [set out as a note under 50 U.S.C. 3161]; Executive Order No. 10899 of December 9, 1960 [set out as a note under 42 U.S.C. 2162]; Executive Order No. 11057 of December 18, 1962 [set out as a note under 42 U.S.C. 2162]; Executive Order No. 11477 of August 7, 1969 [set out as a note under 42 U.S.C. 2187]; Executive Order No. 11752 of December 17, 1973 [formerly set out as a note under 42 U.S.C. 4331]; and Executive Order No. 11761 of January 17, 1974 [formerly set out as a note under 20 U.S.C. 1221]; are modified to provide that all such functions shall be exercised by (1) the Secretary of Energy to the extent consistent with the functions of the Atomic Energy Commission that were transferred to the Administrator of Energy Research and Development pursuant to the Energy Organization Act of 1974 (Public Law 93–438; 88 Stat. 1233) [42 U.S.C. 5801 et seq.], and (2) the Nuclear Regulatory Commission to the extent consistent with the functions of the Atomic Energy Commission that were transferred to the Commission by the Energy Reorganization Act of 1974 [42 U.S.C. 5801 et seq.].

(2) [Former] Executive Order No. 11652, as amended, relating to the classification of national security matters, is further amended by substituting ''Department of Energy'' for ''Energy Research and Development Administration'' in Sections 2(A), 7(A) and 8 and by deleting ''Federal Power Commission'' in Section 2(B)(3).

(3) Executive Order No. 11902 of February 2, 1976 [formerly set out as a note under 42 U.S.C. 5841], relating to export licensing policy for nuclear materials and equipment, is amended by substituting ''the Secretary of Energy'' for ''the Administrator of the United States Energy Research and Development Administration, hereinafter referred to as the Administrator'' in Section 1(b) and for the ''Administrator'' in Sections 2 and 3.

(4) [Former] Executive Order No. 11905, as amended, relating to foreign intelligence activities, is further amended by deleting ''Energy Research and Development Administration'', ''Administrator or the Energy Research and Development Administration'', and ''ERDA'' wherever those terms appear and substituting ''Department of Energy'', ''Secretary of Energy'', and ''DOE'' respectively.

(5) Section 3(2) of each of the following Executive Orders is amended by substituting ''Department of Energy'' for ''Energy Research and Development Administration'':

(i) Executive Order No. 11345, as amended [formerly set out as a note under 42 U.S.C. 1962b], establishing the Great Lakes River Basin Commission.

(ii) Executive Order No. 11371, as amended [formerly set out as a note under 42 U.S.C. 1962b], establishing the New England River Basin Commission.

(iii) Executive Order No. 11578, as amended [formerly set out as a note under 42 U.S.C. 1962b], establishing the Ohio River Basin Commission.

(iv) Executive Order No. 11658, as amended [formerly set out as a note under 42 U.S.C. 1962b], establishing the Missouri River Basin Commission.

(v) Executive Order No. 11659, as amended [formerly set out as a note under 42 U.S.C. 1962b], establishing the Mississippi River Basin Commission.

SEC. 5. *Special Provisions Relating to Emergency Preparedness and Mobilization Functions*.

(a) Executive Order No. 10480, as amended [formerly set out as a note under 50 U.S.C. App. 2153], is further amended by adding thereto the following new Sections:

''Sec. 609. Effective October 1, 1977, the Secretary of Energy shall exercise all authority and discharge all responsibility herein delegated to or conferred upon (a) the Atomic Energy Commission, and (b) with respect to petroleum, gas, solid fuels and electric power, upon the Secretary of the Interior.

''Sec. 610. Whenever the Administrator of General Services believes that the functions of an Executive agency have been modified pursuant to law in such manner as to require the amendment of any Executive order which relates to the assignment of emergency preparedness functions or the administration of mobilization programs, he shall promptly submit any proposals for the amendment of such Executive orders to the Director of the Office of Management and Budget in accordance with the provisions of Executive Order No. 11030, as amended [set out as a note under 44 U.S.C. 1505].

(b) Executive Order No. 11490, as amended [formerly set out as a note under 50 U.S.C. App. 2251], is further amended by adding thereto the following new section:

''Sec. 3016. Effective October 1, 1977, the Secretary of Energy shall exercise all authority and discharge all responsibility herein delegated to or conferred upon (a) the Federal Power Commission, (b) the Energy Research and Development Administration, and (c) with respect to electric power, petroleum, gas and solid fuels, upon the Department of the Interior.''.

SEC. 6. This Order shall be effective as of October 1, 1977, the effective date of the Department of Energy Organization Act [this chapter] pursuant to the provisions of section 901 [42 U.S.C. 7341] thereof and Executive Order No. 12009 of September 13, 1977 [formerly set

out as a note under 42 U.S.C. 7341], and all actions taken by the Secretary of Energy on or after October 1, 1977, which are consistent with the foregoing provisions are entitled to full force and effect.

JIMMY CARTER.

§ 7151a. Jurisdiction over matters transferred from Energy Research and Development Administration

Notwithstanding any other provision of law, jurisdiction over matters transferred to the Department of Energy from the Energy Research and Development Administration which on the effective date of such transfer were required by law, regulation, or administrative order to be made on the record after an opportunity for an agency hearing may be assigned to the Federal Energy Regulatory Commission or retained by the Secretary at his discretion.

(Pub. L. 95–238, title I, §104(a), Feb. 25, 1978, 92 Stat. 53.)

CODIFICATION

Section was enacted as part of the Department of Energy Act of 1978—Civilian Applications, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7152. Transfers from Department of the Interior

(a) Functions relating to electric power

(1) There are transferred to, and vested in, the Secretary all functions of the Secretary of the Interior under section 825s of title 16, and all other functions of the Secretary of the Interior, and officers and components of the Department of the Interior, with respect to—

(A) the Southeastern Power Administration;

(B) the Southwestern Power Administration;

(C) the Bonneville Power Administration including but not limited to the authority contained in the Bonneville Project Act of 1937 [16 U.S.C. 832 et seq.] and the Federal Columbia River Transmission System Act [16 U.S.C. 838 et seq.];

(D) the power marketing functions of the Bureau of Reclamation, including the construction, operation, and maintenance of transmission lines and attendant facilities; and

(E) the transmission and disposition of the electric power and energy generated at Falcon Dam and Amistad Dam, international storage reservoir projects on the Rio Grande, pursuant to the Act of June 18, 1954, as amended by the Act of December 23, 1963.

(2) The Southeastern Power Administration, the Southwestern Power Administration, and the Bonneville Power Administration,[1] shall be preserved as separate and distinct organizational entities within the Department. Each such entity shall be headed by an Administrator appointed by the Secretary. The functions transferred to the Secretary in paragraphs (1)(A), (1)(B), (1)(C), and (1)(D) shall be exercised by the Secretary, acting by and through such Administrators. Each such Administrator shall maintain his principal office at a place located in the region served by his respective Federal power marketing entity.

(3) The functions transferred in paragraphs (1)(E) and (1)(F)[2] of this subsection shall be exercised by the Secretary, acting by and through a separate and distinct Administration within the Department which shall be headed by an Administrator appointed by the Secretary. The Administrator shall establish and shall maintain such regional offices as necessary to facilitate the performance of such functions. Neither the transfer of functions effected by paragraph (1)(E) of this subsection nor any changes in cost allocation or project evaluation standards shall be deemed to authorize the reallocation of joint costs of multipurpose facilities theretofore allocated unless and to the extent that such change is hereafter approved by Congress.

(b), (c) Repealed. Pub. L. 97–100, title II, § 201, Dec. 23, 1981, 95 Stat. 1407

(d) Functions of Bureau of Mines

There are transferred to, and vested in, the Secretary those functions of the Secretary of the Interior, the Department of the Interior, and officers and components of that Department under the Act of May 15, 1910, and other authorities, exercised by the Bureau of Mines, but limited to—

(1) fuel supply and demand analysis and data gathering;

(2) research and development relating to increased efficiency of production technology of solid fuel minerals, other than research relating to mine health and safety and research relating to the environmental and leasing consequences of solid fuel mining (which shall remain in the Department of the Interior); and

(3) coal preparation and analysis.

(Pub. L. 95–91, title III, § 302, Aug. 4, 1977, 91 Stat. 578; Pub. L. 97–100, title II, § 201, Dec. 23, 1981, 95 Stat. 1407; Pub. L. 104–58, title I, § 104(h), Nov. 28, 1995, 109 Stat. 560.)

REFERENCES IN TEXT

The Bonneville Project Act of 1937, referred to in subsec. (a)(1)(C), is act Aug. 20, 1937, ch. 720, 50 Stat. 731, as amended, which is classified generally to chapter 12B (§ 832 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 832 of Title 16 and Tables.

The Federal Columbia River Transmission System Act, referred to in subsec. (a)(1)(C), is Pub. L. 93–454, Oct. 18, 1974, 88 Stat. 1376, as amended, which is classified generally to chapter 12G (§ 838 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 838 of Title 16 and Tables.

Act of June 18, 1954, as amended by the Act of December 23, 1963, referred to in subsec. (a)(1)(E), is act June 18, 1954, ch. 310, 68 Stat. 255, which was not classified to the Code.

Paragraphs (1)(E) and (1)(F) of this subsection, referred to in subsec. (a)(3), were redesignated as pars. (1)(D) and (1)(E) of this subsection, respectively, by Pub. L. 104–58, title I, § 104(h)(1)(B), Nov. 28, 1995, 109 Stat. 560.

Act of May 15, 1910, referred to in subsec. (d), as amended, probably means act May 16, 1910, ch. 240, 36 Stat. 369, which is classified to sections 1, 3, and 5 to 7 of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Tables.

[1] So in original. The comma probably should not appear.

[2] See References in Text note below.

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, enforcement, reporting to Congress, delegation of authorities, and preemption of inconsistent State or local action.

EXECUTIVE ORDER NO. 11969

Ex. Ord. No. 11969, Feb. 2, 1977, 42 F.R. 6791, as amended by Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957, which delegated to the Secretary of Energy the authority vested in the President by the Emergency Natural Gas Act of 1977 except the authority to declare and terminate a natural gas emergency, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

PROCLAMATION NO. 4485

Proc. No. 4485, Feb. 2, 1977, 42 F.R. 6789, declared that a natural gas emergency existed within the meaning of section 3 of the Emergency Natural Gas Act of 1977, set out as a note above, which emergency was terminated by Proc. No. 4495, Apr. 1, 1977, 42 F.R. 18053, formerly set out below.

PROCLAMATION NO. 4495

Proc. No. 4495, Apr. 1, 1977, 42 F.R. 18053, terminated the natural gas emergency declared to exist by Proc. No. 4485, Feb. 2, 1977, 42 F.R. 6789, formerly set out above.

§ 717a. Definitions

When used in this chapter, unless the context otherwise requires—

(1) ''Person'' includes an individual or a corporation.

(2) ''Corporation'' includes any corporation, joint-stock company, partnership, association, business trust, organized group of persons, whether incorporated or not, receiver or receivers, trustee or trustees of any of the foregoing, but shall not include municipalities as hereinafter defined.

(3) ''Municipality'' means a city, county, or other political subdivision or agency of a State.

(4) ''State'' means a State admitted to the Union, the District of Columbia, and any organized Territory of the United States.

(5) ''Natural gas'' means either natural gas unmixed, or any mixture of natural and artificial gas.

(6) ''Natural-gas company'' means a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale.

(7) ''Interstate commerce'' means commerce between any point in a State and any point outside thereof, or between points within the same State but through any place outside thereof, but only insofar as such commerce takes place within the United States.

(8) ''State commission'' means the regulatory body of the State or municipality having jurisdiction to regulate rates and charges for the sale of natural gas to consumers within the State or municipality.

(9) ''Commission'' and ''Commissioner'' means the Federal Power Commission, and a member thereof, respectively.

(10) ''Vehicular natural gas'' means natural gas that is ultimately used as a fuel in a self-propelled vehicle.

(11) ''LNG terminal'' includes all natural gas facilities located onshore or in State waters that are used to receive, unload, load, store, transport, gasify, liquefy, or process natural gas that is imported to the United States from a foreign country, exported to a foreign country from the United States, or transported in interstate commerce by waterborne vessel, but does not include—

(A) waterborne vessels used to deliver natural gas to or from any such facility; or

(B) any pipeline or storage facility subject to the jurisdiction of the Commission under section 717f of this title.

(June 21, 1938, ch. 556, § 2, 52 Stat. 821; Pub. L. 102–486, title IV, § 404(a)(2), Oct. 24, 1992, 106 Stat. 2879; Pub. L. 109–58, title III, § 311(b), Aug. 8, 2005, 119 Stat. 685.)

AMENDMENTS

2005—Par. (11). Pub. L. 109–58 added par. (11).
1992—Par. (10). Pub. L. 102–486 added par. (10).

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)(1), 7291, and 7293 of Title 42, The Public Health and Welfare.

§ 717b. Exportation or importation of natural gas; LNG terminals

(a) Mandatory authorization order

After six months from June 21, 1938, no person shall export any natural gas from the United States to a foreign country or import any natural gas from a foreign country without first having secured an order of the Commission authorizing it to do so. The Commission shall issue such order upon application, unless, after opportunity for hearing, it finds that the proposed exportation or importation will not be consistent with the public interest. The Commission may by its order grant such application, in whole or in part, with such modification and upon such terms and conditions as the Commission may find necessary or appropriate, and may from time to time, after opportunity for hearing, and for good cause shown, make such supplemental order in the premises as it may find necessary or appropriate.

(b) Free trade agreements

With respect to natural gas which is imported into the United States from a nation with which there is in effect a free trade agreement requiring national treatment for trade in natural gas, and with respect to liquefied natural gas—

(1) the importation of such natural gas shall be treated as a ''first sale'' within the meaning of section 3301(21) of this title; and

(2) the Commission shall not, on the basis of national origin, treat any such imported natural gas on an unjust, unreasonable, unduly discriminatory, or preferential basis.

(c) Expedited application and approval process

For purposes of subsection (a) of this section, the importation of the natural gas referred to in subsection (b) of this section, or the exportation

of natural gas to a nation with which there is in effect a free trade agreement requiring national treatment for trade in natural gas, shall be deemed to be consistent with the public interest, and applications for such importation or exportation shall be granted without modification or delay.

(d) Construction with other laws

Except as specifically provided in this chapter, nothing in this chapter affects the rights of States under—

(1) the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.);

(2) the Clean Air Act (42 U.S.C. 7401 et seq.); or

(3) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

(e) LNG terminals

(1) The Commission shall have the exclusive authority to approve or deny an application for the siting, construction, expansion, or operation of an LNG terminal. Except as specifically provided in this chapter, nothing in this chapter is intended to affect otherwise applicable law related to any Federal agency's authorities or responsibilities related to LNG terminals.

(2) Upon the filing of any application to site, construct, expand, or operate an LNG terminal, the Commission shall—

(A) set the matter for hearing;

(B) give reasonable notice of the hearing to all interested persons, including the State commission of the State in which the LNG terminal is located and, if not the same, the Governor-appointed State agency described in section 717b–1 of this title;

(C) decide the matter in accordance with this subsection; and

(D) issue or deny the appropriate order accordingly.

(3)(A) Except as provided in subparagraph (B), the Commission may approve an application described in paragraph (2), in whole or part, with such modifications and upon such terms and conditions as the Commission find[1] necessary or appropriate.

(B) Before January 1, 2015, the Commission shall not—

(i) deny an application solely on the basis that the applicant proposes to use the LNG terminal exclusively or partially for gas that the applicant or an affiliate of the applicant will supply to the facility; or

(ii) condition an order on—

(I) a requirement that the LNG terminal offer service to customers other than the applicant, or any affiliate of the applicant, securing the order;

(II) any regulation of the rates, charges, terms, or conditions of service of the LNG terminal; or

(III) a requirement to file with the Commission schedules or contracts related to the rates, charges, terms, or conditions of service of the LNG terminal.

(C) Subparagraph (B) shall cease to have effect on January 1, 2030.

(4) An order issued for an LNG terminal that also offers service to customers on an open access basis shall not result in subsidization of expansion capacity by existing customers, degradation of service to existing customers, or undue discrimination against existing customers as to their terms or conditions of service at the facility, as all of those terms are defined by the Commission.

(f) Military installations

(1) In this subsection, the term ''military installation''—

(A) means a base, camp, post, range, station, yard, center, or homeport facility for any ship or other activity under the jurisdiction of the Department of Defense, including any leased facility, that is located within a State, the District of Columbia, or any territory of the United States; and

(B) does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects, as determined by the Secretary of Defense.

(2) The Commission shall enter into a memorandum of understanding with the Secretary of Defense for the purpose of ensuring that the Commission coordinate and consult[2] with the Secretary of Defense on the siting, construction, expansion, or operation of liquefied natural gas facilities that may affect an active military installation.

(3) The Commission shall obtain the concurrence of the Secretary of Defense before authorizing the siting, construction, expansion, or operation of liquefied natural gas facilities affecting the training or activities of an active military installation.

(June 21, 1938, ch. 556, § 3, 52 Stat. 822; Pub. L. 102–486, title II, § 201, Oct. 24, 1992, 106 Stat. 2866; Pub. L. 109–58, title III, § 311(c), Aug. 8, 2005, 119 Stat. 685.)

REFERENCES IN TEXT

The Coastal Zone Management Act of 1972, referred to in subsec. (d)(1), 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.

The Clean Air Act, referred to in subsec. (d)(2), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§ 7401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

The Federal Water Pollution Control Act, referred to in subsec. (d)(3), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§ 1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

AMENDMENTS

2005—Pub. L. 109–58, § 311(c)(1), inserted ''; LNG terminals'' after ''natural gas'' in section catchline.

Subsecs. (d) to (f). Pub. L. 109–58, § 311(c)(2), added subsecs. (d) to (f).

[1] So in original. Probably should be ''finds''.

[2] So in original. Probably should be ''coordinates and consults''.

therein, and, when found necessary for rate-making purposes, other facts which bear on the determination of such cost or depreciation and the fair value of such property.

(b) Inventory of property; statements of costs

Every natural-gas company upon request shall file with the Commission an inventory of all or 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 determine 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. (c) 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 section 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 720d(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 ac-

power so to do, in obedience to the subpena of the Commission, shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than one year, or both.

(e) Testimony of witnesses

The testimony of any witness may be taken at the instance of a party, in any proceeding or investigation pending before the Commission, by deposition at any time after the proceeding is at issue. The Commission may also order testimony to be taken by deposition in any proceeding or investigation pending before it at any stage of such proceeding or investigation. Such depositions may be taken before any person authorized to administer oaths not being of counsel or attorney to either of the parties, nor interested in the proceeding or investigation. Reasonable notice must first be given in writing by the party or his attorney proposing to take such deposition to the opposite party or his attorney of record, as either may be nearest, which notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and depose, and to produce documentary evidence, in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission, as hereinbefore provided. Such testimony shall be reduced to writing by the person taking deposition, or under his direction, and shall, after it has been reduced to writing, be subscribed by the deponent.

(f) Deposition of witnesses in a foreign country

If a witness whose testimony may be desired to be taken by deposition be in a foreign country, the deposition may be taken before an officer or person designated by the Commission, or agreed upon by the parties by stipulation in writing to be filed with the Commission. All depositions must be promptly filed with the Commission.

(g) Witness fees

Witnesses whose depositions are taken as authorized in this chapter, and the person or officer taking the same, shall be entitled to the same fees as are paid for like services in the courts of the United States.

(June 21, 1938, ch. 556, §14, 52 Stat. 828; Pub. L. 91–452, title II, §218, Oct. 15, 1970, 84 Stat. 929.)

AMENDMENTS

1970—Subsec. (h). Pub. L. 91–452 struck out subsec. (h) which related to the immunity from prosecution of any individual compelled to testify or produce evidence, documentary or otherwise, after claiming his privilege against self-incrimination.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–452 effective on sixtieth day following Oct. 15, 1970, and not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91–452, set out as an Effective Date; Savings Provision note under section 6001 of Title 18, Crimes and Criminal Procedure.

STUDY AND REPORT ON NATURAL GAS PIPELINE AND STORAGE FACILITIES IN NEW ENGLAND

Pub. L. 107–355, §26, Dec. 17, 2002, 116 Stat. 3012, provided that:

''(a) STUDY.—The Federal Energy Regulatory Commission, in consultation with the Department of Energy, shall conduct a study on the natural gas pipeline transmission network in New England and natural gas storage facilities associated with that network.

''(b) CONSIDERATION.—In carrying out the study, the Commission shall consider the ability of natural gas pipeline and storage facilities in New England to meet current and projected demand by gas-fired power generation plants and other consumers.

''(c) REPORT.—Not later than 1 year after the date of enactment of this Act [Dec. 17, 2002], the Federal Energy Regulatory Commission shall prepare and submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives a report containing the results of the study conducted under subsection (a), including recommendations for addressing potential natural gas transmission and storage capacity problems in New England.''

§ 717n. Process coordination; hearings; rules of procedure

(a) Definition

In this section, the term ''Federal authorization''—

(1) means any authorization required under Federal law with respect to an application for authorization under section 717b of this title or a certificate of public convenience and necessity under section 717f of this title; and

(2) includes any permits, special use authorizations, certifications, opinions, or other approvals as may be required under Federal law with respect to an application for authorization under section 717b of this title or a certificate of public convenience and necessity under section 717f of this title.

(b) Designation as lead agency

(1) In general

The Commission shall act 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 (42 U.S.C. 4321 et seq.).

(2) Other agencies

Each Federal and State agency considering an aspect of an application for Federal authorization shall cooperate with the Commission and comply with the deadlines established by the Commission.

(c) Schedule

(1) Commission authority to set schedule

The Commission shall establish a schedule for all Federal authorizations. In establishing the schedule, the Commission shall—

(A) ensure expeditious completion of all such proceedings; and

(B) comply with applicable schedules established by Federal law.

(2) Failure to meet schedule

If a Federal or State administrative agency does not complete a proceeding for an approval that is required for a Federal authorization in accordance with the schedule estab-

lished by the Commission, the applicant may pursue remedies under section 717r(d) of this title.

(d) Consolidated record

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. Such record shall be the record for—

(1) appeals or reviews under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.), provided that the record may be supplemented as expressly provided pursuant to section 319 of that Act [16 U.S.C. 1465]; or

(2) judicial review under section 717r(d) of this title of decisions made or actions taken of Federal and State administrative agencies and officials, provided that, if the Court determines that the record does not contain sufficient information, the Court may remand the proceeding to the Commission for further development of the consolidated record.

(e) Hearings; parties

Hearings under this chapter may be held before the Commission, any member or members thereof, or any representative of the Commission designated by it, and appropriate records thereof shall be kept. In any proceeding before it, the Commission in accordance with such rules and regulations as it may prescribe, may admit as a party any interested State, State commission, municipality or any representative of interested consumers or security holders, or any competitor of a party to such proceeding, or any other person whose participation in the proceeding may be in the public interest.

(f) Procedure

All hearings, investigations, and proceedings under this chapter shall be governed by rules of practice and procedure to be adopted by the Commission, and in the conduct thereof the technical rules of evidence need not be applied. No informality in any hearing, investigation, or proceeding or in the manner of taking testimony shall invalidate any order, decision, rule, or regulation issued under the authority of this chapter.

(June 21, 1938, ch. 556, §15, 52 Stat. 829; Pub. L. 109–58, title III, §313(a), Aug. 8, 2005, 119 Stat. 688.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (b)(1), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

The Coastal Zone Management Act of 1972, referred to in subsec. (d)(1), 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.

AMENDMENTS

2005—Pub. L. 109–58 substituted ''Process coordination; hearings; rules of procedure'' for ''Hearings; rules of procedure'' in section catchline, added subsecs. (a) to (d), and redesignated former subsecs. (a) and (b) as (e) and (f), respectively.

§ 717*o*. Administrative powers of Commission; rules, regulations, and orders

The Commission shall have power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this chapter. Among other things, such rules and regulations may define accounting, technical, and trade terms used in this chapter; and may prescribe the form or forms of all statements, declarations, applications, and reports to be filed with the Commission, the information which they shall contain, and the time within which they shall be filed. Unless a different date is specified therein, rules and regulations of the Commission shall be effective thirty days after publication in the manner which the Commission shall prescribe. Orders of the Commission shall be effective on the date and in the manner which the Commission shall prescribe. For the purposes of its rules and regulations, the Commission may classify persons and matters within its jurisdiction and prescribe different requirements for different classes of persons or matters. All rules and regulations of the Commission shall be filed with its secretary and shall be kept open in convenient form for public inspection and examination during reasonable business hours.

(June 21, 1938, ch. 556, §16, 52 Stat. 830.)

§ 717p. Joint boards

(a) Reference of matters to joint boards; composition and power

The Commission may refer any matter arising in the administration of this chapter to a board to be composed of a member or members, as determined by the Commission, from the State or each of the States affected or to be affected by such matter. Any such board shall be vested with the same power and be subject to the same duties and liabilities as in the case of a member of the Commission when designated by the Commission to hold any hearings. The action of such board shall have such force and effect and its proceedings shall be conducted in such manner as the Commission shall by regulations prescribe. The Board shall be appointed by the Commission from persons nominated by the State commission of each State affected, or by the Governor of such State if there is no State commission. Each State affected shall be entitled to the same number of representatives on the board unless the nominating power of such State waives such right. The Commission shall have discretion to reject the nominee from any State, but shall thereupon invite a new nomination from that State. The members of a board shall receive such allowances for expenses as the Commission shall provide. The Commission may, when in its discretion sufficient reason exists therefor, revoke any reference to such a board.

(b) Conference with State commissions regarding rate structure, costs, etc.

The Commission may confer with any State commission regarding rate structures, costs, accounts, charges, practices, classifications, and regulations of natural-gas companies; and the Commission is authorized, under such rules and regulations as it shall prescribe, to hold joint hearings with any State commission in connection with any matter with respect to which the Commission is authorized to act. The Commission is authorized in the administration of this 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 Commission, 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.

§ 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 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:

(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.

§ 1505.2 Record of decision in cases requiring environmental impact statements.

At the time of its decision (§ 1506.10) or, if appropriate, its recommendation to Congress, each agency shall prepare a concise public record of decision. The record, which may be integrated into any other record prepared by the agency, including that required by OMB Circular A–95 (Revised), part I, sections 6(c) and (d), and part II, section 5(b)(4), shall:

(a) State what the decision was.

(b) Identify all alternatives considered by the agency in reaching its decision, specifying the alternative or alternatives which were considered to be environmentally preferable. An agency may discuss preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions. An agency shall identify and discuss all such factors including any essential considerations of national policy which were balanced by the agency in making its decision and state how those considerations entered into its decision.

(c) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not. A monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation.

§ 1505.3 Implementing the decision.

Agencies may provide for monitoring to assure that their decisions are carried out and should do so in important cases. Mitigation (§ 1505.2(c)) and other conditions established in the environmental impact statement or during its review and committed as part of the decision shall be implemented by the lead agency or other appropriate consenting agency. The lead agency shall:

(a) Include appropriate conditions in grants, permits or other approvals.

(b) Condition funding of actions on mitigation.

(c) Upon request, inform cooperating or commenting agencies on progress in carrying out mitigation measures which they have proposed and which were adopted by the agency making the decision.

(d) Upon request, make available to the public the results of relevant monitoring.

PART 1506—OTHER REQUIREMENTS OF NEPA

Sec.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

SOURCE: 43 FR 56000, Nov. 29, 1978, unless otherwise noted.

§ 1506.1 Limitations on actions during NEPA process.

(a) Until an agency issues a record of decision as provided in § 1505.2 (except as provided in paragraph (c) of this section), no action concerning the proposal shall be taken which would:

(1) Have an adverse environmental impact; or

(2) Limit the choice of reasonable alternatives.

(b) If any agency is considering an application from a non-Federal entity, and is aware that the applicant is about to take an action within the agency's jurisdiction that would meet either of the criteria in paragraph (a) of this section, then the agency shall promptly notify the applicant that the agency will take appropriate action to insure that the objectives and procedures of NEPA are achieved.

(c) While work on a required program environmental impact statement is in progress and the action is not covered by an existing program statement,

§ 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 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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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 12th day of January 2016, 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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