
ORAL ARGUMENT NOT YET SCHEDULED

**In the United States Court of Appeals
for the District of Columbia Circuit****Nos. 17-1135, *et al.* (consolidated)**

THE TOWN OF WEYMOUTH, MASSACHUSETTS, *ET AL.*,
Petitioners,**v.****FEDERAL ENERGY REGULATORY COMMISSION,**
Respondent.

**ON PETITIONS FOR REVIEW OF ORDERS OF THE
FEDERAL ENERGY REGULATORY COMMISSION**

**BRIEF OF RESPONDENT
FEDERAL ENERGY REGULATORY COMMISSION**

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May 29, 2018

CIRCUIT RULE 28(a)(1) CERTIFICATE**A. Parties:**

The parties and intervenors before this Court and before the Federal Energy Regulatory Commission in the underlying docket are as stated in the Brief of Petitioners.

B. Rulings Under Review:

1. Order Issuing Certificate and Authorizing Abandonment, *Algonquin Gas Transmission LLC*, 158 FERC ¶ 61,061 (2017) (Certificate Order), JA ____;
2. Order Granting Rehearings for Further Consideration, *Algonquin Gas Transmission LLC*, FERC Docket No. CP16-9-001 (March 27, 2017) (Tolling Order), JA ____;
3. Letter Order Granting Authorization to Proceed with Construction of Connecticut Facilities, *Algonquin Gas Transmission LLC*, FERC Docket No. CP16-9-000 (March 27, 2017) (March Construction Order), JA ____;
4. Letter Order Granting Authorization to Proceed with Construction of Connecticut Facilities #2, *Algonquin Gas Transmission LLC*, FERC Docket No. CP16-9-000 (April 13, 2017) (April Construction Order), JA ____;
5. Order Granting Rehearings for Further Consideration, *Algonquin Gas Transmission LLC*, FERC Docket No. CP16-9-003 (May 8, 2017), JA ____;
6. Order Granting Rehearings for Further Consideration, *Algonquin Gas Transmission LLC*, FERC Docket No. CP16-9-001 (May 24, 2017), JA ____;

7. Order on Rehearing, *Algonquin Gas Transmission LLC*, 160 FERC ¶ 61,016 (2017) (Tolling Rehearing Order), JA ____; and
8. Order on Rehearing, *Algonquin Gas Transmission LLC*, 161 FERC ¶ 61,255 (2017) (Rehearing Order), JA ____.

C. Related Cases:

This case has not been before this Court or any other court. This case is related to *Allegheny Defense Project v. FERC*, No. 17-1098, which has been scheduled for oral argument on the same day before the same panel of this Court. This case also is related to *City of Boston, et al. v. FERC*, Nos. 16-1081, *et al.* (argued October 19, 2017), in that it concerns arguments that the project at issue in this appeal, the Atlantic Bridge Project, was impermissibly segmented from other projects in the Commission's environmental review under the National Environmental Policy Act.

/s/ Lona T. Perry
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GLOSSARY

Algonquin	Algonquin Gas Transmission LLC
April Construction Order	FERC Letter Order Authorizing Construction of Facilities (Apr. 13, 2017), R. 1264, JA ____
Coalition	Petitioners Fore River Residents Against The Compressor Station, Food & Water Watch, the City of Quincy, Massachusetts, Rebecca Haugh, Sandra Peters, Eastern Connecticut Green Action, Keep Yorktown Safe, West Roxbury Save Energy, Berkshire Environmental Action Team, Dragonfly Climate Collective, Grassroots Environmental Education, Safe Energy Rights Group, 350Mass South Shore Node, Toxic Action Center and Stop the Algonquin Pipeline Expansion
Certificate Order	<i>Algonquin Gas Transmission LLC</i> , 158 FERC ¶ 61,061 (2017), R. 1235, JA ____
Certificate Policy Statement	<i>Certification of New Interstate Natural Gas Pipeline Facilities</i> , 88 FERC ¶ 61,227 (1999), <i>clarified</i> , 90 FERC ¶ 61,128, <i>further clarified</i> , 92 FERC ¶ 61,094 (2000)
Commission or FERC	Federal Energy Regulatory Commission
Construction Rehearing Order	<i>Algonquin Gas Transmission, LLC</i> , 161 FERC ¶ 61,287 (2017), JA ____
CZMA	Coastal Zone Management Act
Environmental Assessment	Environmental Assessment for the Atlantic Bridge Project, issued May 2016
Intervenors	Intervenors in Support of Petitioners, Lori and Michael Hayden
March Construction Order	FERC Letter Authorizing Construction of Facilities (Mar. 27, 2017), R. 1258, JA ____
Maritimes	Maritimes & Northeast Pipeline, LLC

NEPA	National Environmental Policy Act
NGA	Natural Gas Act
Petitioners	Petitioners Town of Weymouth, Massachusetts, Fore River Residents Against The Compressor Station, Food & Water Watch, the City of Quincy, Massachusetts, Rebecca Haugh, Sandra Peters, Eastern Connecticut Green Action, Keep Yorktown Safe, West Roxbury Save Energy, Berkshire Environmental Action Team, Dragonfly Climate Collective, Grassroots Environmental Education, Safe Energy Rights Group, 350Mass South Shore Node, Toxic Action Center and Stop the Algonquin Pipeline Expansion
Pipeline Safety Administration	United States Department of Transportation Pipeline and Hazardous Materials Safety Administration
Pipelines	Pipeline certificate applicants Algonquin Gas Transmission, LLC and Maritimes & Northeast Pipeline, L.L.C.
Project	Atlantic Bridge Project, which includes the construction and operation of new or modified compressor stations and pipeline facilities in New York, Connecticut and Massachusetts
Rehearing Order	<i>Algonquin Gas Transmission LLC</i> , 161 FERC ¶ 61,255 (2017), R. 1388, JA ____
Station	A new compressor station located in the Town of Weymouth, Massachusetts, that is one component of the Atlantic Bridge Project
Tolling Order	<i>Algonquin Gas Transmission, LLC</i> , Docket No. CP16-9-001 (Mar. 27, 2017), R. 1257, JA ____
Tolling Rehearing Order	<i>Algonquin Gas Transmission, LLC</i> , 160 FERC ¶ 61,016 (2017), R. 1324, JA ____
Town	Petitioner Town of Weymouth

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

**BRIEF OF RESPONDENT
FEDERAL ENERGY REGULATORY COMMISSION**

STATEMENT OF THE ISSUES

In this proceeding, the Federal Energy Regulatory Commission (FERC or Commission) issued a certificate of “public convenience and necessity” under section 7(c) of the Natural Gas Act (NGA), 15 U.S.C. § 717f(c), to Algonquin Gas Transmission, LLC (Algonquin) and Maritimes & Northeast Pipeline, L.L.C. (Maritimes) (collectively Pipelines). That certificate conditionally authorized Pipelines to construct and operate natural gas pipeline and compression facilities, the Atlantic Bridge Project (Project), in New England. *See Algonquin Gas*

Transmission LLC, 158 FERC ¶ 61,061 (Certificate Order), JA ___, *on reh'g*, 161 FERC ¶ 61,255 (2017) (Rehearing Order), JA ___.

The Project primarily involves replacing 6.3 miles of existing pipeline and modifying existing facilities, but also includes the construction of a new compressor station in Weymouth, Massachusetts, which is the main source of controversy. While of limited scope, the Project will address transmission constraints in New England and enable Pipelines to provide additional firm service to accommodate increasing demand. The new capacity is fully subscribed under precedent agreements with shippers.

In its Environmental Assessment, the Commission determined that the Project, including the new compressor station, with appropriate mitigation measures, would not significantly affect the quality of the human environment. Ultimately, upon balancing the evidence of public benefits against the limited potential adverse effects of the Project, coupled with its finding of no significant environmental impact, the Commission determined that Project construction and operation would serve the public interest.

The issues raised by Petitioners in this appeal concern whether the Commission reasonably issued the certificate of public convenience and necessity:

- (1) based on market need for the fully-subscribed Project, notwithstanding that some Project gas ultimately will be exported to Canada;

- (2) conditioned on future compliance with the Coastal Zone Management Act, where no construction in the coastal zone will be approved prior to compliance; and
- (3) based on the thorough review in the Environmental Assessment of Project impacts on safety, noise, soil, traffic, environmental justice communities and greenhouse gas emissions, resulting in a finding of no significant impact on the human environment which renders an Environmental Impact Statement unnecessary.

Intervenors, who could have petitioned for review, raise three arguments not raised by Petitioners, which this Court under its settled practice should decline to consider. Should the Court proceed to Intervenor's arguments, the issues are:

- (1) whether the Court has jurisdiction over orders issued under delegated authority by a Commission Branch Chief, and, if so, whether the delegation, which was ratified by the Commission, is valid;
- (2) whether a contractor's alleged conflict of interest invalidates the Environmental Assessment, where the contractor met Commission conflict of interest standards and Commission staff fully controlled the Environmental Assessment process; and
- (3) whether the Environmental Assessment fully considered the impact of hazardous air pollutant emissions from the new compressor station.

STATUTORY AND REGULATORY PROVISIONS

Pertinent statutes and regulations are contained in the Addendum.

COUNTERSTATEMENT OF JURISDICTION

Petitioners¹ filed in this case six petitions for review, collectively challenging eight Commission orders. For the Court's convenience, the Commission has attached at the end of this brief a chart summarizing the petitions for review, the orders challenged in those petitions, and the rehearing requests filed with respect to those orders.

I. THE PETITIONS FOR REVIEW IN DOCKET NOS. 17-1135, 17-1139 AND 17-1176 ARE INCURABLY PREMATURE.

Three of the petitions for review, Docket Nos. 17-1135, 17-1139 and 17-1176, were filed when the petitioners had requests for rehearing pending before the Commission. As this Court has held, a petition for review filed when the petitioner has a request for rehearing pending before the Commission is incurably premature as it seeks review of non-final agency action. *Clifton Power Corp. v. FERC*, 294 F.3d 108, 111-12 (D.C. Cir. 2002). That the Commission subsequently acts on the

¹ Petitioners are the Town of Weymouth (Town) and the Fore River Residents Against The Compressor Station, Food & Water Watch, the City of Quincy, Massachusetts, Rebecca Haugh, Sandra Peters, Eastern Connecticut Green Action, Keep Yorktown Safe, West Roxbury Save Energy, Berkshire Environmental Action Team, Dragonfly Climate Collective, Grassroots Environmental Education, Safe Energy Rights Group, 350Mass South Shore Node, Toxic Action Center and Stop the Algonquin Pipeline Expansion (collectively Coalition).

rehearing request does not cure the jurisdictional defect. *Id.* at 110. On June 30, 2017, the Commission filed a motion to dismiss Docket Nos. 17-1135 and 17-1139, and on August 3, 2017, filed an unopposed motion to apply the Court's disposition of the motion to dismiss to Docket No. 17-1176. By Order of September 21, 2017, this Court referred the Commission's motion to dismiss, as well as a motion filed by Pipelines, to the merits panel, and directed that the parties address in their briefs the issues presented in the motions to dismiss.

On brief, Petitioners' arguments that their petitions are not premature, Petitioner Brief at 3-8, rest on challenges to procedural tolling orders issued by the Commission Secretary, which grant rehearing "for the limited purpose of further consideration," to "afford additional time for consideration of the matters raised or to be raised" on rehearing. *See* R. 1257, JA ____; R. 1276, JA ____; R. 1283, JA _____. *See also* Rehearing Order P 147 & n.367, JA ____ (citing cases upholding validity of tolling orders). Tolling orders do not resolve rehearing requests but simply extend the time (beyond 30 days) to consider them. *Algonquin Gas Transmission, LLC*, 160 FERC 61,016 P 7 & n. 18 (2017), R. 1323, JA ____ (Tolling Rehearing Order) (citing cases).

Tolling orders thus do not alter the incurable prematurity of the three petitions for review. This Court has held that it lacks jurisdiction over a petition for review filed after a tolling order but before the Commission acts on the merits

of the rehearing request. *Moreau v. FERC*, 982 F.2d 556, 564 (D.C. Cir. 1993). In *Moreau*, as here, the Commission granted rehearing “for the limited purpose of further consideration.” *Id.* at 562. Notwithstanding this action, the Court found that it lacked jurisdiction to review the matter until FERC ruled on the merits of the rehearing request. *Id.* at 564. Other circuits recently have granted motions to dismiss petitions for review of pipeline certificate orders where FERC had issued tolling orders but had not acted on the merits of pending rehearing requests. *See Coal. to Reroute Nexus v. FERC*, 6th Cir. No. 17-4302 (Mar. 15, 2018) (available at <https://www.ferc.gov/legal/court-cases/opinions/2018/17-4302Opinion.pdf>); *Appalachian Voices v. FERC*, 4th Cir. No. 18-1114 (Mar. 21, 2018) (available at http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/case-documents/2018/20180321_docket-18-1114_order.pdf).

II. THE COMMISSION’S DELEGATION OF TOLLING AUTHORITY TO THE SECRETARY WAS VALID.

Petitioners argue (Petitioner Brief at 4-5), that the Commission Secretary could not have delegated tolling authority while the Commission was without a quorum. First, as this Court has found, the Commission’s subsequent ratification of a delegation of authority by affirming the action on rehearing “resolve[s] any potential delegation problems.” *Murray Energy Corp. v. FERC*, 629 F.3d 231, 236 (D.C. Cir. 2011). *See also, e.g., Dana Corp. v. ICC*, 703 F.2d 1297, 1301 (D.C.

Cir. 1983) (“[E]ven if there were serious problems of authorization involved, the full Commission, by upholding the Acting Chairman’s stay, ratified his action and made it its own.”). Here, in the Tolling Rehearing Order PP 5-9, JA ____-____, and the Rehearing Order PP 147-48, JA ____-____, the Commission denied arguments challenging the Secretary’s delegated authority and affirmed the validity of tolling orders issued by the Secretary. Accordingly, as in *Murray*, “[w]hatever the merits of [Petitioners’] arguments here, they cannot succeed” where the Commission ratified the delegated action. 629 F.3d at 236.

Petitioners, moreover, failed to preserve this issue for appellate review. The Coalition did not seek rehearing of any tolling order. Under the NGA, “[n]o 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 rehearing thereon.” Natural Gas Act section 19(a), 15 U.S.C. 717r(a). *See also, e.g., Del. Riverkeeper Network v. FERC*, 857 F.3d 388, 393, 399 (D.C. Cir. 2017) (FERC letter orders were not properly before the Court where petitioner did not request rehearing); 18 C.F.R. §§ 375.301(a), 375.713, and 385.1902(a) (rehearing can be sought regarding any staff action taken pursuant to delegated authority).

While the Town did seek rehearing of the March 2017 order tolling the time for rehearing of the Certificate Order (Tolling Order), R. 1257, JA ____, the Town argued on rehearing only that the delegation to the Secretary was an

unconstitutional delegation of authority to an individual under *PHH Corp. v.*

Consumer Financial Protection Bureau, 839 F.3d 1 (D.C. Cir. 2016). *See* R. 1271

at 3-4, JA ____ - ____; *see also* Tolling Rehearing Order P 6, JA ____ (“Weymouth’s

request for rehearing is premised entirely upon the D.C. Circuit’s opinion in *PHH*

Corp.”). *PHH* subsequently was vacated by the Court, which, on rehearing *en*

banc, found the challenged statute constitutional. *PHH Corp. v. Consumer*

Financial Protection Bureau, 881 F.3d 75 (D.C. Cir. 2018) (*en banc* decision).

The Court lacks jurisdiction to consider the new challenges to the Tolling Order

the Town now makes on brief. *See* 15 U.S.C. § 717r(b) (“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.”); *Intermountain Mun. Gas Agency*

v. FERC, 326 F.3d 1281, 1285-86 (D.C. Cir. 2003) (no jurisdiction under NGA

where argument not raised on rehearing).

In any event, the delegation to the Secretary was valid. The Commission had a quorum in 1995 when it delegated authority to the Secretary to issue tolling orders.² Rehearing Order P 148, JA _____. In advance of losing its quorum, the

² *See Delegation of Authority to the Secretary, the Director of the Office of Electric Power Regulation and the General Counsel*, 60 Fed. Reg. 62,326 (Dec. 6, 1995), FERC Stats. & Regs., Reg. Preambles Jan. 1991-June 1996 ¶ 31,030 (1995) (“1995 Delegation Order”). The delegation is codified in 18 C.F.R. § 375.302(v),

Commission affirmed that this delegated authority would continue while the Commission temporarily lacked a quorum. *Id.* (citing *Agency Operations in the Absence of a Quorum*, 158 FERC ¶ 61,135 n.5 (2017)). The Commission reasonably concluded, therefore, that the authority delegated to staff remained intact during the time the Commission was without a quorum. As this Court and others have found, a staff member to whom authority is delegated while an agency has a quorum retains that authority when a quorum is lacking. *See Algonquin Gas Transmission, LLC*, 161 FERC ¶ 61,287 P 25 & n.44 (2017) (Construction Rehearing Order), JA ____ (citing cases). *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, 564 F.3d 469 (D.C. Cir. 2009), cited Petitioner Brief at 5, did not consider the type of non-final delegated staff authority at issue here, but rather “considered only whether plenary, final authority delegated to panels of the Board’s own members could survive when the Board had no quorum” *UC Health v. NLRB*, 803 F.3d 669, 678 (D.C. Cir. 2015).

The Town also argues that, because it filed a Motion for Stay on the same day it requested rehearing of the Certificate Order, the preamble to the Commission’s 1995 rulemaking prevents the delegation of tolling authority to the Secretary. *See* Petitioner Brief at 7 (quoting preamble). The preamble, however,

which includes in delegations to staff “the authority of the Secretary to toll the time for action on requests for rehearing.”).

recognizes the Secretary's authority to issue tolling orders for "stand-alone" rehearing requests; here the Town filed a motion for stay, R. 1243, JA ____, separate from its request for rehearing, R. 1242, JA ____. The regulation, moreover, does not limit the Secretary's authority to toll requests for rehearing; 18 C.F.R. § 375.302(v) provides that: "The Commission authorizes the Secretary, or the Secretary's designee to: Toll the time for action on requests for rehearing." The unambiguous language of the regulation is controlling. *See Nat'l Wildlife Fed'n v. EPA*, 286 F.3d 554, 569-70 (D.C. Cir. 2002); *Entergy Servs., Inc. v. FERC*, 375 F.3d 1204, 1209 (D.C. Cir. 2004).

In any event, even if the Tolling Order were invalid and rehearing of the Certificate Order were denied by operation of law, the Rehearing Order would not "be disregarded." *See* Petitioner Brief at 9. Until the certified index to the record is filed with the Court, the Commission retains jurisdiction under the statute to "modify or set aside, in whole or in part," any prior order. NGA § 19(a), 15 U.S.C. § 717r(a). *See also Clifton Power*, 294 F.3d at 111 (under same provision of the Federal Power Act, after petition for review is filed, FERC and the Court retain concurrent jurisdiction until the Commission certifies the record to the Court).

III. THE COURT LACKS JURISDICTION OVER CHALLENGES TO THE MARCH AND APRIL CONSTRUCTION ORDERS.

In Docket No. 17-1139, the Coalition purports to challenge two FERC letter orders authorizing construction of certain Project facilities, issued in March 2017,

R. 1258, JA____ (March Construction Order), and April 2017, R. 1264, JA ____ (April Construction Order). However, no party, including the Coalition, filed a petition for review of the Construction Rehearing Order, JA ____, denying rehearing of those orders. Accordingly, the Coalition has failed to satisfy the jurisdictional requirements for review. *See* NGA section 19, 15 U.S.C. § 717r(b) (aggrieved party obtains Court review by petitioning within 60 days of Commission action on rehearing); *see also, e.g., Williston Basin Interstate Pipeline Co. v. FERC*, 475 F.3d 330, 335 (D.C. Cir. 2006) (judicial review is available only if a party files within 60 days of the agency’s ruling on rehearing). Consequently, the Court also lacks jurisdiction over the arguments of Intervenors Lori and Michael Hayden (Intervenors) challenging the Commission’s Construction Orders. *See* Intervenor Brief at 28-31.

STATEMENT OF FACTS

I. STATUTORY AND REGULATORY BACKGROUND

A. The Natural Gas Act

The principal purpose of the Natural Gas Act is “to encourage the orderly development of plentiful supplies of . . . natural gas at reasonable prices.” *Pub. Utils. Comm’n of Cal. v. FERC*, 900 F.2d 269, 281 (D.C. Cir. 1990) (quoting *NAACP v. FPC*, 425 U.S. 662, 670 (1976)). To that end, NGA sections 1(b) and (c) grant the Commission jurisdiction over the transportation and wholesale sale of

natural gas in interstate commerce. 15 U.S.C. §§ 717(b), (c). Before a company may construct a facility that transports natural gas, it must obtain from the Commission a “certificate of public convenience and necessity” under Natural Gas Act section 7(c), 15 U.S.C. § 717f(c), and “comply with all other federal, state, and local regulations not preempted by the NGA.” *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 240 (D.C. Cir. 2013).

Under NGA section 7(e), the Commission shall issue a certificate to any qualified applicant upon finding that the proposed construction and operation of the pipeline facility “is or will be required by the present or future public convenience and necessity.” *Id.* § 717f(e). The Act empowers the Commission to “attach to the issuance of the certificate . . . such reasonable terms and conditions as the public convenience and necessity may require.” *Id.*

The Natural Gas Act, as amended in 2005, endows the Commission with procedural authority to coordinate the processing and review of certificate applications. *See* 15 U.S.C. § 717n. To this end, the Commission is “the lead agency for the purposes of coordinating all applicable Federal authorizations, including air quality permits.” *Dominion Transmission*, 723 F.3d at 241 (citing 15 U.S.C. § 717n(b)(1)). Pursuant to this procedural authority, the Commission is authorized to set a schedule to “ensure expeditious completion of all such proceedings.” 15 U.S.C. § 717n(c)(1).

B. The National Environmental Policy Act

The Commission's consideration of an application for a certificate of public convenience and necessity triggers the National Environmental Policy Act (NEPA). *See* 42 U.S.C. §§ 4321, *et seq.* NEPA sets out procedures to be followed by federal agencies to ensure that the environmental effects of proposed actions are "adequately identified and evaluated." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989); *Dep't of Transp. v. Public Citizen*, 541 U.S. 752, 768 (2004). "NEPA imposes only procedural requirements on federal agencies with a particular focus on requiring agencies to undertake analyses of the environmental impact of their proposals and actions." *Public Citizen*, 541 U.S. at 756-57 (quoting *Robertson*, 490 U.S. at 349-50); *see also Theodore Roosevelt Conservation P'ship v. Salazar*, 616 F.3d 497, 503 (D.C. Cir. 2010) (NEPA ensures a "fully informed and well-considered decision, not necessarily the best decision"). Accordingly, an agency must "take a 'hard look' at the environmental consequences before taking a major action." *Balt. Gas & Elec. Co. v. Natural Res. Def. Council, Inc.*, 462 U.S. 87, 97 (1983) (citation omitted).

Regulations implementing NEPA require agencies to consider the environmental effects of a proposed action by preparing either an Environmental Assessment, if supported by a finding of no significant impact, or a more comprehensive Environmental Impact Statement. *See* 40 C.F.R. § 1501.4

(detailing when to prepare an Environmental Impact Statement versus an Environmental Assessment). Once the agency issues a finding of no significant impact, it has fulfilled NEPA's documentation requirements. *See Taxpayers of Mich. Against Casinos v. Norton*, 433 F.3d 852, 857 (D.C. Cir. 2006).

C. The Coastal Zone Management Act

The Natural Gas Act does not affect the rights of states under the Coastal Zone Management Act (CZMA). *See* 15 U.S.C. § 717b(d)(2). The CZMA requires state approval for federal licenses and permits affecting state coastal management zones. *See* 16 U.S.C. § 1456(c)(3)(A) (“[n]o license or permit shall be granted by [a] Federal agency until the state or its designated agency has concurred with the applicant’s certification” that the proposed activity “is consistent with the objectives of this chapter”); *Del. Dep’t of Nat. Res. & Envtl. Control v. FERC*, 558 F.3d 575, 578 (D.C. Cir. 2009) (discussing relationship between FERC project approval and the CZMA).

Under the CZMA, states develop coastal zone protection programs that are approved by the National Oceanic and Atmospheric Administration. *Del. Dep’t*, 558 F.3d at 576. Any applicant for a federal license to conduct activities in that coastal zone must certify that the proposed activity complies with the state program. *Id.* The state has six months to determine whether it concurs with the applicant’s certification. *Id.* In the absence of state concurrence, ordinarily no

license can be granted unless the Secretary of Commerce preempts the state's pre-approval rights. *Id.*

II. THE COMMISSION'S REVIEW OF THE PROJECT

A. The Environmental Review Of The Project

The Atlantic Bridge Project is intended to enable Algonquin to provide an additional 132,705 dekatherms per day of firm transportation from Algonquin's existing receipt points in New Jersey and New York to various new and existing delivery points on Algonquin's system, including its interconnection with Maritimes in Massachusetts. Certificate Order P 8, JA _____. *See* Environmental Assessment Figure 1.5-1, JA ____ (Project Overview Map). The Project will also enable Maritimes to provide 106,276 dekatherms per day of firm transportation service from its interconnection to various existing delivery points on its system. *Id.* This additional capacity was intended to accommodate increasing demand in the New England region, *id.* PP 29, 31, JA ____, ____, and to address natural gas supply constraints. Rehearing Order P 118, JA _____. Pipelines executed long-term contracts (precedent agreements) for 100 percent of the additional capacity provided by the Project. Certificate Order P 10, JA _____.

The Project primarily involves replacing 6.3 miles of existing pipeline and modifying existing compressor stations and metering facilities in New York, Connecticut and Massachusetts. Certificate Order P 70, JA ____; *id.* PP 5-7,

JA ____-__ (describing facilities). The Project also involves the construction of a new compressor station in the Town of Weymouth, Massachusetts (Station). *Id.* P 5, JA _____. A compressor station increases the system pressure on the pipeline to keep the gas in the pipeline moving at the desired rate. *Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301, 1312 (D.C. Cir. 2015).

In February 2015, Commission staff began its environmental review of the Project by granting Pipelines' request to use the Commission's "pre-filing procedures." Certificate Order P 46, JA _____. As part of the pre-filing review, staff participated in 13 open houses sponsored by the applicants to explain the environmental review process to stakeholders. *Id.* The Commission in April 2015 published a notice of its intent to prepare an Environmental Assessment in the Federal Register, and mailed the notice to more than 2300 interested entities. *Id.* P 47, JA _____. In May 2015, Commission staff conducted public scoping meetings in New York, Connecticut and Massachusetts to allow the public to comment on the project and the environmental issues that should be included in the Environmental Assessment. *Id.* P 48, JA _____. Most of the comments received concerned the proposed Weymouth Compressor Station. *Id.* P 54, JA _____.

The Environmental Assessment, issued in May 2016 for a 30-day comment period, addressed all substantive issues raised during the scoping period. *Id.* P 52, JA _____. In a report exceeding 200 pages plus exhibits, the Environmental

Assessment addressed geology, soils, groundwater, surface water, wetlands, vegetation, wildlife, protected species, fisheries resources, land use, recreation areas, visual resources, socioeconomics, cultural resources, air and noise quality, pipeline safety, and alternatives. Rehearing Order P 41, JA _____. The Commission found that, “[b]ased on the analysis in the [Environmental Assessment], the extent and content of comments received during the scoping period, and the scope of the project, which primarily involves take-up and re-lay and modifications to existing facilities” the Project impacts could be mitigated so there would be no significant impact on the human environment. Certificate Order PP 70, 252, JA ____, ____; Rehearing Order P 41, JA _____.

B. The Certificate Order

On January 25, 2017, the Commission issued a conditional certificate of public convenience and necessity to the Pipelines authorizing Project construction. Certificate Order P 2, JA _____. The Commission applied the criteria set forth in its Certificate Policy Statement³ to determine whether there is a need for the Project and whether the Project will serve the public interest. *Id.* P 25, JA _____. The

³ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement). The Commission recently issued a Notice of Inquiry seeking information and stakeholder perspectives to help the Commission explore whether, and if so how, it should revise its approach under its currently effective Certificate Policy Statement. *Certification of New Interstate Natural Gas Pipeline Facilities*, 163 FERC ¶ 61,042 (2018).

Commission found significant demand for the Project's capacity, as evidenced by the precedent agreements for 100 percent of the Project's capacity, assuring that Pipeline's existing customers will not be required to subsidize the Project. *Id.* PP 10, 27, JA ___, ___. The Commission found moreover that Pipelines had taken appropriate steps to minimize adverse impacts on landowners and surrounding communities. *Id.* PP 30-31, JA ___-___.

The Commission's environmental review of the Project considered the Environmental Assessment and all substantive comments on it. *Id.* P 54, JA ___. *See also id.* PP 46-252, JA ___-___ (detailing the Commission's environmental analysis of the Project). The Commission found that the Project, if constructed and operated as described in the Environmental Assessment, and in compliance with the environmental conditions in the Commission's order, would not constitute a major federal action significantly affecting the quality of the human environment. *Id.* P 252, JA ___.

Ultimately, upon balancing the evidence of public benefits against the limited potential adverse effects of the Project, coupled with its finding of no significant environmental impact, the Commission determined that the Project, with appropriate environmental conditions, is required by the public convenience and necessity. *Id.* P 31, JA ___. The Commission's approval of the proposed Project was expressly conditioned upon the fulfillment of 23 environmental

conditions, many of which must be satisfied before any construction activities could take place. *See id.* at Appendix B, JA ____-____. Among those conditions is the requirement that, prior to commencing construction, Pipelines are required to file with the Commission documentation that they have received all applicable authorizations required under federal law, including the Coastal Zone Management Act. *Id.* at Appendix B, Environmental Condition No. 9, JA ____.

On February 24, 2017, Petitioners and Intervenors filed requests for rehearing of the Certificate Order.

C. Orders Issued While Requests For Rehearing Of The Certificate Order Were Pending

Following Petitioners' and Intervenors' requests for rehearing, on March 27, 2017, "[i]n order to afford additional time for consideration of the matters raised or to be raised" in the rehearing requests, the Commission's Secretary issued the Tolling Order, which granted rehearing "for the limited purpose of further consideration" by the Commission. R. 1257, JA _____. Only the Town sought rehearing of the Tolling Order, R. 1271, JA _____, which the Commission denied in the Tolling Rehearing Order, R. 1323, JA _____.

On the same day as the Tolling Order, Commission staff separately issued the March Construction Order authorizing Algonquin to proceed with construction of certain facilities in Connecticut. *See* R. 1258, JA _____. The April Construction Order authorized construction of additional facilities in Connecticut and New

York. R. 1264, JA _____. On April 7, 2017, the Coalition, except for Sandra Peters, sought rehearing of the March Construction Order. *See* R. 1263, JA _____. On April 26, 2017, Intervenor sought rehearing of the March and April Construction Orders. *See* R. 1272, JA _____. The Commission denied those rehearing requests in the Construction Rehearing Order. *See* JA _____.

D. The Order Denying Rehearing Of The Certificate Order

In the Rehearing Order, issued on December 13, 2017, the Commission denied requests for rehearing of the Certificate Order. Rehearing Order P 4, JA _____. As relevant to this appeal, the Commission rejected arguments that: the third-party contractor retained to complete the Environmental Analysis had a conflict of interest (*id.* PP 9-17, JA ____-____); the Commission violated the CZMA by issuing the conditional Certificate Order in advance of state concurrence that the Project was consistent with the state's coastal management program (*id.* PP 20-24, JA ____-____); the Commission erred in concluding that no Environmental Impact Statement was required for the Project (*id.* PP 25-35, JA ____-____); the Commission lacked substantial evidence for its finding of need for the Project (*id.* PP 36-41, JA ____-____); and the Commission inadequately considered the impact of the Project on traffic (*id.* PP 82-88, JA ____-____), environmental justice communities (*id.* PP 91-99, JA ____-____), air quality (*id.* PP 100-112, JA ____-____), greenhouse gas emissions

(*id.* PP 113-119, JA ____-__), noise (*id.* PP 123-133, JA ____-__), and safety (*id.* PP 134-139, JA ____-__).

SUMMARY OF ARGUMENT

The Commission satisfied all of its statutory responsibilities in approving the Atlantic Bridge Project. Under the Natural Gas Act, Congress entrusted the Commission with broad power to determine whether a natural gas certificate application is in the public convenience and necessity. The Commission, in approving the Project, balanced the many competing interests, as it must in acting on any project application. Here, consistent with agency policy and this Court's precedent, the market need for the Project is demonstrated by long-term contracts for 100 percent of Project capacity, assuring that Pipelines' existing customers will not be required to subsidize the Project. That a portion of the gas to be transported on Project facilities ultimately is intended for export does not change this analysis. Moreover, none of the Project facilities are export facilities or located at the point of exit for exports, and the Department of Energy, not the Commission, is responsible for determining the public interest of any ultimate export of gas.

Congress also entrusted the Commission with broad power to approve natural gas certificate applications with such "terms and conditions" as the Commission finds necessary. Thus, while NGA section 7 provides that the Commission must recognize state authority under the Coastal Zone Management

Act, the Commission may conditionally approve an application, subject to later compliance with the CZMA, where no construction in the coastal zone will be approved prior to compliance. Petitioners' argument that the Commission cannot act until it has received all necessary state authorizations and permits for the Project would undermine the Commission's broad and exclusive authority to review such applications in a timely manner.

The Commission's decision, after developing the detailed Environmental Assessment, that the Project, including the Weymouth Compressor Station, would not have a significant impact on the quality of the human environment was an informed and reasoned decision. The Environmental Assessment fully identifies, describes, and analyzes the Project's potential impacts, including, as relevant here, safety, noise, soils, traffic, air quality, greenhouse gas emissions, and environmental justice communities, and recommends appropriate mitigation measures to address identified adverse impacts. With potential adverse impacts effectively mitigated, no Environmental Impact Statement was required, and the Commission was justified in concluding, after balancing Project benefits and impacts, that the Project advances the public interest.

Intervenors, who could have petitioned for review, raise three issues not addressed by Petitioners, which this Court under its settled practice should decline to address. Should the Court reach the merits, the Commission reasonably

determined that the Environmental Assessment thoroughly addressed hazardous air pollutant emissions from the Station and was not compromised by any conflict of interest on the part of the third-party contractor assisting in its preparation. This Court further lacks jurisdiction to consider Intervenors' arguments challenging the delegation of authority to a Commission Branch Chief to issue construction orders, which authority was nonetheless validly delegated to the Branch Chief and subsequently ratified by the Commission.

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). Review under this standard is narrow. *FERC v. Elec. Power Supply Ass’n*, 136 S.Ct. 760, 782 (2016). “A court is not to ask whether a regulatory decision is the best one possible or even whether it is better than the alternatives.” *Id.* Rather, the court must uphold the Commission’s determination “if the agency has examined the relevant considerations and articulated a satisfactory explanation for its action, including a rational connection between the facts found and the choice made.” *Id.* (cleaned up); *see also Aera Energy LLC v. FERC*, 789 F.3d 184, 190 (D.C. Cir. 2015).

Because the grant or denial of a certificate of public convenience and necessity is within the Commission's discretion, the Court does not substitute its judgment for that of the Commission. *Myersville*, 783 F.3d at 130; *see also Minisink Residents for Env'tl. Pres. & Safety v. FERC*, 762 F.3d 97, 106 (D.C. Cir. 2014) (same). The Court evaluates only whether the Commission considered relevant factors and whether there was a clear error of judgment. *Myersville*, 783 F.3d at 1308; *see also Minisink*, 762 F.3d at 106 (the Court considers only whether the Commission's decision was reasoned, principled, and based upon the record).

The Administrative Procedure Act's arbitrary and capricious standard also applies to challenges under the National Environmental Policy Act. *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) (quoting *Balt. Gas & Elec.*, 462 U.S. at 97-98)).

Actions of administrative agencies taken pursuant to NEPA are entitled to a high degree of deference. *Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 377-78 (1989). This Court evaluates agency compliance with NEPA under a "rule of reason" standard. *Minisink*, 762 F.3d at 112. This Court has consistently declined

to “flyspeck” the Commission’s environmental analysis. *Id.* Thus, “[a]s long as the agency’s decision is ‘fully informed’ and ‘well-considered,’ it is entitled to judicial deference and a reviewing court should not substitute its own policy judgment.” *Natural Res. Def. Council, Inc. v. Hodel*, 865 F.2d 288, 294 (D.C. Cir. 1988) (quoting *N. Slope Borough v. Andrus*, 642 F.2d 589, 599 (D.C. Cir. 1980)).

II. THE COMMISSION’S DECISION TO ISSUE THE PROJECT CERTIFICATE WAS REASONABLE AND SUPPORTED BY SUBSTANTIAL EVIDENCE.

Section 7(e) of the Natural Gas Act grants the Commission exclusive authority to determine whether an application to construct natural gas facilities “is or will be required by the present or future public convenience and necessity.” 15 U.S.C. § 717f(e). This statutory provision confers broad authority upon the Commission. *See FPC v. Transcon. Gas Pipeline Corp.*, 365 U.S. 1, 7 (1961) (Commission is “the guardian of the public interest,” entrusted “with a wide range of discretionary authority”); *Columbia Gas Transmission Co. v. FERC*, 750 F.2d 105, 112 (D.C. Cir. 1984) (Commission vested with wide discretion to balance competing equities against the backdrop of the public interest).

The “public convenience and necessity” analysis under section 7(e) has two components. Certificate Order PP 25-26, JA ____-____; *Sierra Club v. FERC*, 867 F.3d 1357, 1379 (D.C. Cir. 2017). First, “the applicant must show that the project will ‘stand on its own financially’ because it meets a ‘market need.’” *Sierra Club*,

867 F.3d at 1379 (quoting *Myersville*, 783 F.3d at 1309); Certificate Order P 26, JA _____. The applicant can make this showing through evidence of preconstruction contracts for gas transportation service. *Sierra Club*, 867 F.3d at 1379. Second, if there is market need, the Commission then balances project benefits against identified harms, and grants the certificate if the benefits outweigh the harms. *Id.*

The Commission satisfied its statutory responsibilities here by balancing the public benefits offered by the Project against its potential impacts. *See* Certificate Order P 31, JA _____ (balancing need for the Project against identified potential adverse consequences). The fully-subscribed Project would enable Pipelines to provide additional firm service to accommodate increasing demand in New England, *id.*, and would address natural gas supply constraints that impede state initiatives to increase use of natural gas. Rehearing Order P 118, JA _____.

The Commission further found that Pipelines had adequately minimized any adverse effects on landowners and surrounding communities, Certificate Order P 30, JA _____, and that the Project would not significantly impact the quality of the human environment. *Id.* P 252, JA _____. In finding no significant impact, consistent with its responsibilities under NEPA, the Commission considered all perspectives and was responsive to all arguments, whether economic or environmental in nature, in the comprehensive Environmental Assessment that informed these orders. Petitioners' and Intervenor's comments throughout the

agency proceeding -- like every commenter's concerns -- were considered as part of the Commission's public interest balance.

Based on the project benefits, the minimal adverse effects on landowners and surrounding communities, and the Commission's environmental review, the Commission found that the public convenience and necessity required approval and certification of the Project under NGA section 7, subject to the environmental and operational conditions imposed in the Certificate Order. Certificate Order P 31, JA _____. In reaching this conclusion, the Commission fully satisfied its responsibilities under the Natural Gas Act. *See Robertson*, 490 U.S. at 350 ("If the adverse environmental effects of the proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs."); *Midcoast Interstate Transm. Inc. v. FERC*, 198 F.3d 960, 967 (D.C. Cir. 2000) (same).

A. The Commission Reasonably Found Market Need For The Project.

The Commission's Certificate Policy Statement outlines the criteria the Commission will consider in determining whether a proposed facility should receive a certificate of public convenience and necessity under NGA section 7(e). *See* Certificate Order PP 25-26, JA ____-____; *Myersville*, 783 F.3d at 1309. The threshold determination is whether the project produces a public benefit by satisfying a market need. Certificate Order P 25, JA ____; *Sierra Club*, 867 F.3d at

1379; *Myersville*, 783 F.3d at 1309, 1311; *Minisink*, 762 F.3d at 111 n.10. The applicant can make this showing through evidence of preconstruction contracts for gas transportation service. *See, e.g., Sierra Club*, 867 F.3d at 1379 (preconstruction contracts for 93 percent of project capacity); *Myersville*, 783 F.3d at 1309, 1311 (fully-subscribed project).

Here, the Commission found strong evidence of market demand for the project as evidenced by the fact that Pipelines executed long-term precedent agreements with shippers for 100 percent of the firm transportation service to be made available by the Project. Certificate Order PP 10, 74, JA ___, ___. While Petitioners assert that market trends suggest demand for natural gas will decline, Petitioner Brief at 88, this Court has held that the Commission need not look beyond the demand evidenced by long-term contracts for project capacity to assess a project's benefits. Rehearing Order P 38, JA ___ (citing *Myersville*, 783 F.3d at 1311 (Commission was not required to assess project benefits by looking beyond the market need reflected by existing contracts with shippers)). *See also Minisink*, 762 F.3d at 111 n.10 (affirming reliance on existing gas contracts to demonstrate public benefits of project); *Sierra Club*, 867 F.3d at 1379 (preconstruction contracts adequately established market need for the project). Thus, the Commission reasonably found that Project shippers' agreement to long-term firm

transportation contracts for all Project capacity demonstrates public benefit.

Rehearing Order P 38, JA ____; Certificate Order P 74, JA ____.

Petitioners argue that the Commission cannot consider the 52 percent of Project capacity that will be used for gas ultimately exported to Canada. *See* Petitioner Brief at 85-88. The Commission reasonably determined that whether the markets to be served were domestic or foreign did not alter the Commission's finding of market need for the Project. Rehearing Order PP 37, 39, JA ____, ____.

See also Certificate Order P 74 & n.63, JA ____ (citing Certificate Policy Statement, 88 FERC at 61,748; *Myersville*, 783 F.3d at 1311; *Minisink*, 762 F.3d at 112 n.10).

Under the Certificate Policy Statement, the threshold determination regarding market need for the project ensures that the project can proceed without subsidies from the applicant's existing customers. Certificate Order P 26, JA ____; *Myersville*, 783 F.3d at 1309 (citing Certificate Policy Statement, 88 FERC at 61,745). Thus, as this Court found in rejecting arguments about the lack of "public need" for a project allegedly driven by private profit motives, "[t]hat argument misunderstands our test. The criterion is 'market need' -- whether the pipelines will be self-supporting -- which the applicants here satisfied by showing that 93% of their capacity has already been contracted for." *Sierra Club*, 867 F.3d at 1379. Similarly, here, whether or not any of the gas transported on the Project is

ultimately exported, Pipelines' precedent agreements for 100 percent of Project capacity assure that Pipelines' existing customers will not be required to subsidize the Project. Rehearing Order PP 37-39, JA ____-____; Certificate Order P 74 & n.63, JA ____.

Moreover, none of the Project facilities are export facilities nor are they located at a potential site of exit for exports. Rehearing Order P 39 n.86, JA ____.

The Project involves construction or modification of pipeline facilities on the Algonquin system in New York, Connecticut and Massachusetts, which will provide additional transmission capacity on Algonquin's system, including to Algonquin's existing interconnection with Maritimes at Beverly, Massachusetts. Certificate Order PP 5-8, JA ____-____. The Project added no new capacity to Maritimes' transmission system; Maritimes will use existing capacity to transport gas to its existing delivery points, including those in Canada (on Maritimes' system, the Project only involves modification of one metering station in Maine). *Id.* PP 7, 9, JA ____, ____.

As the Commission found, the new Project facilities would accommodate increasing demand in New England, Certificate Order PP 29, 31, JA ____, ____, and address New England supply constraints. Rehearing Order P 118, JA ____.

In any event, the Department of Energy, not the Commission, authorizes the export of natural gas, including determining whether the export is in the public

interest. Rehearing Order P 39 & n.86, JA ____; Certificate Order P 75, JA ____.

See Sierra Club v. FERC, 827 F.3d 36, 40 (D.C. Cir. 2016) (Department of Energy has exclusive authority over the export of natural gas as a commodity). The Natural Gas Act directs the Department to deem exports of natural gas to countries with whom the United States has a free trade agreement, including Canada, to be in the public interest. *Id.* at 40 & n.1 (citing 15 U.S.C. § 717b(c)); *Sierra Club v. DOE*, 867 F.3d 189, 192 (D.C. Cir. 2017). *See* Rehearing Order P 39 n.86, JA ____ (citing *Valley Crossing Pipeline, LLC*, 161 FERC ¶ 61,084 P 13 (2017) (the NGA requires that exports to countries with free trade agreements with the United States be deemed to be in the public interest; export facilities promote national economic policy by reducing barriers to foreign trade and stimulating the flow of goods and services)).

B. The Commission Did Not Violate The CZMA By Issuing A Conditional Certificate Prior To State Action.

In issuing its conditional certificate for the Project, the Commission recognized that the Project cannot proceed without all other necessary federal authorizations, including those delegated to the states under the Coastal Zone Management Act. Rehearing Order P 21, JA _____. Environmental Condition No. 9 thus required that Pipelines file with the Commission documentation of all applicable authorizations under federal law. Certificate Order, Appendix B, Environmental Condition No. 9, JA _____. As to the CZMA, the only Project

facility that falls within a state coastal zone management area is the Weymouth Compressor Station. *See* Environmental Assessment at 2-66, JA ____.

Accordingly, in Environmental Condition No. 16, the Commission required that Algonquin file with the Commission the Massachusetts determination of consistency under the CZMA prior to construction of the Station. Certificate Order Appendix B, Environmental Condition No. 16, JA ____.

Natural Gas Act section 7 grants the Commission broad authority to issue certificates of public convenience and necessity with “reasonable terms and conditions.” Certificate Order P 60, JA ____ (quoting 15 U.S.C. § 717f(e)); *see, e.g., Atlantic Refining Co. v. Pub. Serv. Comm’n of N.Y.*, 360 U.S. 378, 391 (1959) (recognizing Commission discretion to attach such conditions to certificates as it deems necessary). Under that broad authority, the Commission routinely issues certificates for natural gas infrastructure projects subject to the federal permitting requirements of the CZMA and other federal statutes. Certificate Order P 60, JA ____.

This approach “appropriately respects the integration of the various permitting requirements for interstate pipelines,” while at the same time providing “a practical response to the reality that, in spite of the best efforts of those involved, it may be impossible for an applicant to obtain all approvals necessary to construct and operate a natural gas project in advance of the Commission’s issuance of its certificate without unduly delaying the project.” Rehearing Order

P 22, JA _____. Delaying the in-service date of needed projects, required in the public convenience and necessity, acts to the detriment of consumers and the public in general. *Id.*

This Court has upheld the authority of the Commission to issue certificates conditioned on obtaining other necessary authorizations. Rehearing Order P 22 n.38, JA _____. *See, e.g., Del. Riverkeeper*, 857 F.3d at 397 (certificate conditioned on state approval under Clean Water Act) (citing *Gunpowder Riverkeeper v. FERC*, 807 F.3d 267, 279 (D.C. Cir. 2015) (certificate conditioned on state approval under Clean Water Act) (Rogers, J., concurring in the judgment)); *Myersville*, 783 F.3d at 1320-21 (certificate conditioned on state approval under Clean Air Act); *Del. Dep't of Nat. Resources & Env'tl. Control v. FERC*, 558 F.3d 575, 578 (D.C. Cir. 2009) (state suffered no injury from certificate conditioned on state CZMA approval because no construction will commence prior to state certification).

The Coastal Zone Management Act requires “any applicant for a required Federal license or permit to conduct an activity, in or outside of the coastal zone, affecting any land or water use or natural resource of the coastal zone of that state” to certify in the licensing process that “the proposed activity complies with the enforceable policies of the state’s approved program and that such activity will be conducted in a manner consistent with the program.” 16 U.S.C. § 1456(c)(3)(A).

FERC cannot grant the “license or permit to conduct an activity” until the state has concurred with the applicant’s certification, unless concurrence is waived or overruled by the Secretary of Commerce. *Id.*

The Commission reasonably concluded that its conditional certificate authorization met this requirement: “Because construction cannot commence before all necessary authorizations are obtained, there can be no impact on the environment until there has been full compliance with all relevant federal laws.” Rehearing Order P 21, JA _____. As this Court has found, a conditional certificate is “merely a first step for [the applicant] to take in the complex procedure to actually obtaining construction approval.” *Del. Riverkeeper*, 857 F.3d at 398. Thus, where the Commission’s project approval is expressly conditioned on completion of the applicant’s duties under the CZMA, the order is an “incipient authorization without current force and effect, since it does not yet allow [the applicant] to begin the activity it proposes.” *Crown Landing LLC*, 117 FERC ¶ 61,209 (2006), *pet. for review dismissed*, *Del. Dep’t*, 558 F.3d 575 (cited in the Rehearing Order P 21, JA ____). Accordingly, the substantive interest protected by the CZMA, the state’s ability to prevent construction of the project, is not undermined by the Commission’s conditional order. *Del. Dep’t*, 558 F.3d at 578-79.

Petitioners acknowledge that the conditional certificate prevents project construction prior to CZMA compliance. Petitioner Brief at 40. Petitioners

nevertheless contend that issuance of the conditional certificate itself was an “activity affecting any land . . . use” under the CZMA because it would preempt otherwise applicable state and local wetlands and zoning laws, *id.* at 40-41, and potentially permit Algonquin to exercise eminent domain. *Id.* at 42-43. Petitioners did not, however, make this statutory construction argument on rehearing of the Certificate Order. *See* Town Request for Rehearing, R. 1242 at 14-19, JA ____-____(CZMA argument); Coalition Request For Rehearing, R. 1246 at 17-19, JA ____-____ (CZMA argument). Accordingly, the Court lacks jurisdiction to consider this argument. *See, e.g., Intermountain Mun. Gas Agency v. FERC*, 326 F.3d 1281, 1286 n.7 (D.C. Cir. 2003) (court lacked jurisdiction over petitioners’ argument based on statutory phrase where the phrase was not discussed in petitioners’ rehearing request); *Constellation Energy Commodities Grp., Inc. v. FERC*, 457 F.3d 14, 21 (D.C. Cir. 2006) (court lacked jurisdiction over argument based on tariff language that was not raised on rehearing).

In any event, as Petitioners admit, Petitioner Brief at 43 n.95, Algonquin did not exercise eminent domain to acquire the Weymouth Compressor Station site. *See* Certificate Order P 170, JA ____ (Algonquin acquired the Station site through a settlement agreement with the current owner). Further, as this Court has found, the Coastal Zone Management Act “mandate[s] that federal licensing authorities ensure compliance by proposed projects with relevant state-based environmental

programs.” *Del. Dep’t*, 558 F.3d at 576. Petitioners have not shown that avoiding the exercise of eminent domain is within the zone of interests protected by the CZMA. *See, e.g., Gunpowder Riverkeeper*, 807 F.3d at 274-75 (claimed injury from eminent domain is not within the zone of environmental interests protected by the Clean Water Act).

With regard to preemption, this Court in *Myersville*, 783 F.3d at 1319-21, rejected citizen arguments that a conditional Commission certificate was unlawful because it preempted local land use and zoning laws in advance of Maryland granting the project a Clean Air Act permit. As this Court found, state rights under the Clean Air Act, as preserved by the Natural Gas Act savings clause, 15 U.S.C. § 717b(d), include only state and local laws that are incorporated into the state’s Clean Air Act implementation plan. *Id.* at 1320-21. Thus, the Commission did not violate the Clean Air Act by granting a conditional certificate that has the effect of preempting state and local laws or regulations that are not included in the state plan and are therefore not protected under the NGA savings clause and the Clean Air Act. *Id.* at 1321.

Similarly, here, the Coastal Zone Management Act concerns consistency with a state’s coastal management plan. *See* 16 U.S.C. § 1456(c)(3)(A) (requiring certification that applicant’s proposed activity is consistent with state management program); *Del Dep’t*, 558 F.3d at 576. The Commission does not violate the

CZMA by issuing an order that may preempt other state and local laws that are not included in the state's coastal management plan. *See, e.g., Dominion Transmission*, 723 F.3d at 241 (although generally the NGA occupies the field to the exclusion of state law, the NGA specifically saved state Clean Air Act powers from preemption, and therefore state laws are preserved to the extent they are included in state implementation plan).

III. THE COMMISSION'S ENVIRONMENTAL ASSESSMENT FULLY COMPLIED WITH NEPA.

The Environmental Assessment, which exceeded 200 pages plus exhibits, addressed all substantive issues raised during the scoping period, including geology, soils, groundwater, surface water, wetlands, vegetation, wildlife, protected species, fisheries resources, land use, recreation areas, visual resources, socioeconomics, cultural resources, air and noise quality, pipeline safety and alternatives. Certificate Order P 52, JA ____; Rehearing Order P 41, JA _____. The Commission found that, “[b]ased on the analysis in the [Environmental Assessment], the extent and content of comments received during the scoping period, and the scope of the project, which primarily involves take-up and re-lay and modifications to existing facilities,” Project impacts can be mitigated to support a finding of no significant impact. Certificate Order P 70, JA ____; Rehearing Order P 41, JA ____; Environmental Assessment at 1-3, JA _____. *See, e.g., Cabinet Mountains Wilderness v. Peterson*, 685 F.2d 678, 682 (D.C. Cir.

1982) (a finding of no significant impact can be predicated upon mitigation measures); *Pub. Citizen v. Nat'l Hwy. Traffic Safety Admin.*, 848 F.2d 256, 266 (D.C. Cir. 1988) (agency's finding of no significant impact is entitled to deference). An Environmental Impact Statement is unnecessary if the agency makes a "finding of no significant impact" on the human environment. *Myersville*, 783 F.3d at 1322.

Petitioners challenge the no significant impact finding as to the Weymouth Station. They argue that the Environmental Assessment failed adequately to consider: (1) safety, noise, coal ash, traffic, and greenhouse gas emissions caused by the Station; (2) the alleged disproportionate impact of these concerns on nearby environmental justice communities; and (3) "intensity" factors requiring preparation of an Environmental Impact Statement. *See* Petitioner Brief at 50-85. As demonstrated below, each of these concerns was fully addressed and evaluated in the Environmental Assessment, and therefore Petitioners fail to demonstrate that the Commission fell short of the "hard look" requirement of NEPA. *See Balt. Gas & Elec.*, 462 U.S. at 97 (agency took a "hard look" where it adequately considered and disclosed the environmental impact of its actions).

To the extent Petitioners disagree with the Commission's choice of methodology, this Court affords "'an extreme degree of deference'" to FERC's evaluation of scientific data within its technical expertise. *Del. Riverkeeper*, 857

F.3d at 396 (quoting *Myersville*, 783 F.3d at 1308); *see also, e.g., Morongo Band of Mission Indians v. FAA*, 161 F.3d 569, 577 (9th Cir. 1998) (court generally rejects plaintiff attempts to engage in battle of experts regarding issues such as air quality and noise because agency has discretion to rely on the reasonable opinions of its own qualified experts).

A. The Commission Reasonably Evaluated Station Impacts On The Human Environment.

1. Safety

Petitioners contend that the Commission failed adequately to consider the safety of the Weymouth Station, given its proximity to a sewage pumping station and an electric generation facility, “creating the possibility that a fire could be communicated to the compressor.” Petitioner Brief at 46. *See also* Intervenor Brief at 20-22 (arguing Commission failed to consider the “domino” effect from gas ignition at the Station on nearby infrastructure). Petitioners also point to the Station’s proximity to the Fore River Bridge, with passing oil tankers, and its location in a hurricane inundation zone. Petitioner Brief at 47-48.

As the Commission observed, the Environmental Assessment extensively addressed the safety of the Project. Rehearing Order P 135, JA ____ (citing Environmental Assessment at 2-112 - 2-122, JA ____-__). In Section 2.9.3, JA ____-__, the Environmental Assessment specifically considered the potential for an incident at the Weymouth Station to impact nearby infrastructure, including

dangers posed by proximity to the sewer pump station and by oil tanker passage under the Fore River Bridge. Rehearing Order P 135, JA ____; Certificate Order P 236, JA _____. Section 2.9.3 evaluated plausible incidents of gas release, based on historical incident reports to the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration (Pipeline Safety Administration),⁴ and concluded that the Station would not result in a significant increase in risk to the nearby public, nor would a major event at the Station likely pose a threat to nearby infrastructure, including any “domino” effect. Rehearing Order PP 27, 135, JA ____, ____; Certificate Order P 236, JA ____; Environmental Assessment at 2-120 - 2-121, JA ____ - ____.

The Commission rejected claims (Petitioner Brief at 46; Intervenor Brief at 20) that the Station was too close to the sewage pumping station in violation of 49 C.F.R. § 192.163(a), which requires a compressor station to be far enough away from other structures “to minimize the possibility of fire being communicated to the compressor building. . . .” Rehearing Order P 135 & n.335, JA _____. The Commission reasonably concluded that the regulation does not establish minimum setback requirements and no party provided scientific evidence that the Station

⁴ The Pipeline Safety Administration administers the national regulatory program to ensure the safe transportation of natural gas and other hazardous materials by pipeline. Rehearing Order P 27, JA ____.

location would violate the regulation. Rehearing Order P 136, JA ____; Certificate Order P 228, JA ____.

To the contrary, Project facilities, including the Station, will be designed, constructed, and operated to meet or exceed applicable Pipeline Safety Administration regulations. Rehearing Order PP 27, 135, JA ____, ____. In accordance with the Commission's regulation, 18 C.F.R. § 157.14(a)(10)(vi), Algonquin certified that it will "design, install, inspect, test, construct, operate, replace, and maintain" the Station in accordance with Pipeline Safety Administration regulations. Certificate Order P 230, JA _____. Additionally, because the Weymouth Station is located in a high consequence area, Pipeline Safety Administration regulations require an integrity management program which involves identifying threats to facilities and imposing conditions to remediate those threats. *Id.* P 236, JA ____.

Petitioners object to the Commission's reliance on a future plan to be approved by another federal agency, Petitioner Brief at 46-47, but the Commission appropriately may rely on the Pipeline Safety Administration's expertise and historical incident data in determining that the Project, and specifically the Station, will not significantly increase the risk to human safety. Rehearing Order P 27, JA _____. The Commission fulfills its responsibility to independently evaluate safety where the Environmental Assessment discusses safety concerns at length

and the Commission's authorization is subject to safety-related conditions, including compliance with relevant federal and other requirements and coordination with relevant agencies. *EarthReports, Inc. v. FERC*, 828 F.3d 949, 958-59 (D.C. Cir. 2016) (reliance on opinions and standards of federal and local authorities and applicant's future coordination with those authorities was one reasonable component of FERC's independent review of safety considerations). *See also, e.g., Murray*, 629 F.3d at 239-40 (rejecting safety objections to pipeline construction over a mine where FERC required that the pipeline develop a future mitigation plan including measures required by the Pipeline Safety Administration). This is not the situation presented in *Washington Gas Light Co. v. FERC*, 532 F.3d 928 (D.C. Cir. 2008) (cited Petitioner Brief at 44-46), where a known safety risk could not be adequately remediated prior to the in-service date of a liquefied natural gas plant.

The Commission also reasonably concluded that the proposed Station design would minimize the potential for flooding and impacts from hurricanes. Certificate Order P 123, JA ____; Rehearing Order P 28, JA _____. While portions of the Station construction workspace are within a 100-year flood zone, the permanent Station footprint will not be in a flood zone. Certificate Order P 124, JA _____. The Station will be raised to 19 feet above sea level, and will be designed to minimize the risk of sea level rise, storm surge and flash flooding, based on

conservative estimates of sea level rise and storm surge over a 50-year period.

Certificate Order P 125, JA ____; Rehearing Order P 28, JA ____ (citing Environmental Assessment at 2-3, JA ____).

The Commission likewise reasonably rejected claims that it should require Algonquin to submit its Emergency Response Plan to the Commission for approval. Certificate Order P 231, JA ____.

Pursuant to Pipeline Safety Administration regulations, Algonquin will develop an Emergency Response Plan specific to the Station prior to placing it into service. *Id.* P 183, JA ____ (describing key elements of the plan). “The Emergency Response Plan is a regulatory requirement under [the Pipeline Safety Administration’s] jurisdiction. The Commission’s approval herein has no bearing on the adequacy or approval of the Emergency Response Plan for compliance with [the Pipeline Safety Administration’s] regulation.” *Id.* P 231, JA ____.

The Supreme Court and this Court have rejected arguments that NEPA requires an agency to have finalized mitigation plans before approving a project, particularly where the mitigation plan is within the jurisdiction of another agency. *See Robertson*, 490 U.S. at 352-53; *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 206 (D.C. Cir. 1991).

The Commission also fully addressed concerns about the safety record of Algonquin’s parent company, Spectra Energy Corporation. Petitioner Brief at 48-49. The Environmental Assessment found that Spectra’s reportable incident and

leak rates are significantly lower than industry averages. Certificate Order PP 232-33, JA ____-__ (citing Environmental Assessment Table 2.9.2-1, JA ____); Rehearing Order P 138, JA _____. The cited 2016 explosion likely was caused by faulty construction methodology when the pipeline was constructed in 1981; construction methodology has advanced significantly in the interim. Certificate Order PP 232-33, JA ____-__. Incident statistics in New England and nationwide demonstrate that pipelines are a safe and reliable means of transporting natural gas. *Id.* (citing Environmental Assessment at 2-118 - 2-119, JA ____-__); Rehearing Order P 138, JA _____. As for Spectra's Form 10-K statements, Petitioner Brief at 49-50, the fact that Spectra found it prudent to disclose to investors risks associated with terrorism and accidents at its facilities did not cause the Commission to question the thorough consideration of the safety of this Project in the Environmental Assessment. Rehearing Order P 138, JA _____.

2. Noise

The proposed Weymouth Compressor Station will be constructed in a developed industrial area, located between an existing water treatment facility and an electric power plant. Environmental Assessment at 2-74, JA _____. The Station will not directly impact any recreational area, but it is near two privately-owned parcels with conservation restrictions, Kings Cove and Lovells Grove. Certificate Order P 166, JA ____ (citing Environmental Assessment at 2-65 - 2-66, JA ____-__).

The Station site and Lovells Grove and Kings Cove parcels also are located near a major roadway. Certificate Order P 220, JA ____.

With regard to the noise produced by the Station, the Environmental Protection Agency has found that an L_{dn} of 55 dBA⁵ protects the public from interference with indoor and outdoor activity. *Id.* Here, Pipelines committed to noise mitigation measures, including building enclosures, mufflers/silencers and insulation. *Id.* P 222, JA _____. *See* Environmental Assessment at 2-109, JA ____ (detailing sound mitigation measures). With these mitigation measures, Station noise will not exceed 55 dBA. Rehearing Order P 130, JA ____; Environmental Assessment at 2-140 - 2-141, JA ____ - _____. *See also* Certificate Order Appendix B, Environmental Condition 20, JA _____.

With regard to the Station's incremental impact on existing noise, the noise analysis added the Station's noise impact to existing noise levels at nine Noise Sensitive Areas recommended by the Massachusetts Energy Facilities Siting Board, and concluded that the Station would increase noise levels by between 0.1

⁵ Two measures that relate the time-varying quality of environmental noise to its known effect on people are the 24-hour equivalent sound level (L_{eq}), and the day-night sound level (L_{dn}), which is the L_{eq} plus 10 dBA (decibels on the A-weighted scale) to account for people's greater sensitivity to nighttime sound levels. Environmental Assessment at 2-99, JA _____. The A-weighted scale is used to assess noise impacts because human hearing is less sensitive to low and high frequencies than mid-range frequencies. *Id.*

and 2.5 dBA, an increase generally imperceptible to the human ear. *See* Rehearing Order PP 90, 123, JA ____; Certificate Order P 220, JA ____; Environmental Assessment at 2-140, Table 2.8.3-1, Figure 2.8.3-4, JA ____, ____, _____. *See* also Environmental Assessment at 2-99, JA ____ (the human ear's threshold of perception for noise change is 3 dBA).

Petitioners criticize the use of short-term measurements of existing background sound levels rather than long-term monitoring (i.e. over one to two weeks). Petitioner Brief at 63-64. The Commission found that the noise analysis in the Environmental Assessment accurately represents the appropriate baseline sound levels. Rehearing Order P 126, JA ____; Certificate Order P 224, JA ____.

No established criteria exist on the amount of time, equipment, or methodology to be used to characterize baseline conditions, and NEPA does not require a “worst-case” analysis of conditions that may occur. Rehearing Order P 125, JA ____ (citing *Robertson*, 490 U.S. at 333). For proposed new compressor stations, Commission regulations permit applicants either to measure existing sound levels or to estimate existing sound levels based on land use. Rehearing Order P 125, JA ____ (citing 18 C.F.R. § 380.12(k)(2)(iii)). The Environmental Protection Agency has established average baseline day-night sound levels based on land use categories: quiet suburban areas (50 dBA L_{dn}), normal suburban residential areas (55 dBA L_{dn}), and urban residential areas (60 to 70 dBA L_{dn}). *Id.* Here, Pipelines

exceeded the Commission's minimum requirements by measuring existing noise levels, including daytime and nighttime ambient sound measurements, which were generally consistent with the land use-based averages. *Id.* P 126, JA ____; Certificate Order P 224, JA ____.

Nor did the noise analysis fail to measure noise on secondary streets. Petitioner Brief at 65-66. The noise surveys conformed to the Commission's standard practice of selecting measurement positions that are representative of the closest residential structure -- i.e., those that would be most affected by the project. Rehearing Order P 124, JA _____. Several of the measurement positions selected were on secondary streets. *Id.* (citing Environmental Assessment, Figure 2.8.3-4, JA ____).

The Commission disagreed that Kings Cove and Lovells Grove should be considered Noise Sensitive Areas because they are outdoor recreational areas. Rehearing Order P 127, JA _____. *See* Petitioner Brief at 67-70. While Commission regulations do not define Noise Sensitive Areas, such areas typically include, *inter alia*, residences, schools, hospitals and places of worship, and may include parks and wilderness areas valued specifically for their solitude and tranquility. Rehearing Order P 127, JA _____. The Lovells Grove and Kings Cove parcels are located near a major roadway and a developed industrial area, and therefore do not rise to the level of parks valued for their solitude and tranquility. *Id.*

Nevertheless, Commission staff examined these parcels as if they were Noise Sensitive Areas and found that neither parcel would suffer a perceptible noise increase. Rehearing Order P 128, JA ____; Certificate Order P 220, JA ____.

As shown in Environmental Assessment Table 2.8.3-1, JA ____, and Figure 2.8.3-4, JA ____, this area has recorded ambient noise levels of 70.4 dBA L_{dn}. Certificate Order P 220, JA ____.

Based on the logarithmic addition of sound, a noise receptor 70 feet away could experience a 2 dBA increase in sound, and a receptor 100 feet away could experience a 1 dBA increase. *Id.* Lovells Grove is over 500 feet away from the Station and would not experience a perceptible increase in noise. *Id.* At its closest point, Kings Cove is about 80 to 90 feet away from the Station, and therefore could experience up to a 2 dBA noise increase, which is not perceptible. *Id.* Therefore, the Commission concluded that the Station would not significantly modify the noise character of this area. *Id.*

Petitioners assert that the Commission erred in using Noise Sensitive Area 1, rather than Area 2, to determine the noise level at Kings Cove because “the northern extent of the King’s Cove Parcel is almost as close to Measurement Position 2 as it is to Measurement Position 1.” Petitioners Brief at 68-69. *See also id.* at 69-70 (citing Affidavit of Edward Duncan at P 10, R. 1242, JA ____)

(claiming the Station “may result” in a sound level increase of 10 to 20 dBA in Kings Cove based on the alleged error of using Area 1 rather than Area 2).

The Commission found that it was proper to use the closest location of the Kings Cove parcel to identify the maximum impact of the Station. Rehearing Order P 128, JA _____. *See* Environmental Assessment Figure 2.8.3-4, JA _____ (mapping Noise Sensitive Area measurement positions). Further, although the northern-most point of Kings Cove is closer to Area 2 (a residential area across the Fore River from the Station) than Area 1 (a residential area immediately adjacent to the Fore River Bridge), the northern-most point is immediately adjacent to the sewage pumping station and on the same side of the Fore River as Area 1. Rehearing Order P 128, JA _____. Therefore, the Commission found that Area 2 does not adequately represent the characteristics of the Kings Cove parcel. *Id.* In any event, the projected noise level of the Station is about 49 dBA L_{dn} at the northern-most point of Kings Cove, which is below the Commission's 55 dBA L_{dn} criterion. *Id.* P 129, JA _____.

The Commission also reasonably addressed the impacts of a blowdown (a venting of natural gas to accommodate maintenance or emergency shutdowns). *See* Petitioner Brief at 70-72. Blowdown events generate noise for short periods of time (i.e., 1 to 5 minutes). *See* Certificate Order P 223, JA _____ (citing Environmental Assessment at 2-111, JA _____); Rehearing Order P 132, JA _____. Algonquin will install a blowdown silencer to ensure that noise attributable to blowdown events will be at or below 60 dBA at a distance of 300 feet. Certificate

Order P 223, JA _____. The Commission reasonably rejected estimating the number of blowdowns at the Station by reference to blowdowns at other stations because each station is unique and operates under different conditions. Rehearing Order P 132, JA _____. The non-routine and short duration of the blowdown events, along with the proposed mitigation, will not expose individuals to high decibel noise or be a significant contributor to operation noise from the project. *Id.*; Certificate Order P 223, JA _____.

The Environmental Assessment also addressed tone noise, Petitioner Brief at 72, concluding that Station noise would meet both FERC and Massachusetts noise requirements, including the Massachusetts noise guideline for pure tone noise condition. Environmental Assessment at 2-109 - 2-110, JA _____. *See id.* at 2-101, JA _____ (describing Massachusetts “pure tone” condition requirements).

3. Coal Ash

The Compressor Station Phase I Environmental Site Investigation revealed the presence of coal ash, arising from the historic use of the site as an oil terminal and coal storage facility. *See* Certificate Order P 128, JA ____; Environmental Assessment at 2-8, 2-67, JA _____, _____. Petitioners argue that the Commission violated NEPA by relying on a plan for managing this hazardous material “that has not been provided to the Commission.” Petitioner Brief at 60-61 (emphasis removed). To the contrary, the Commission reviewed Algonquin’s *Unexpected*

Contamination Encounter Procedure and found it acceptable. Certificate Order P 128, JA ____; Environmental Assessment at 2-8, JA _____. The plan includes measures to isolate contaminated areas, notify appropriate agencies, gather information, monitor hazardous conditions, and properly dispose of hazardous material. Certificate Order P 128, JA _____. Any Station impacts on soil would be highly localized and take place only during construction. Rehearing Order P 66, JA _____.

Additionally, Algonquin will have a Licensed Site Professional (an expert authorized by Massachusetts to oversee assessment and cleanup of contamination) to oversee soil management activities during construction and to ensure compliance with the Massachusetts Contingency Plan and related Massachusetts Department of Environmental Protection policies and guidance. Certificate Order P 129, JA ____; Rehearing Order P 66, JA _____. Algonquin will also have an appropriate environmental scientist and/or geologist present on-site during earthwork activities. Rehearing Order P 66, JA _____. To ensure compliance, Pipelines' certificate is conditioned upon compliance with all applicable laws, including those required under the Massachusetts Contingency Plan. *Id.* P 67, JA _____. The Certificate Order Environmental Conditions moreover require that Pipelines employ an Environmental Inspector, who is empowered to order correction of acts that violate those conditions. *Id.* (citing Certificate Order

Appendix B, Environmental Condition (7)(c), JA ____). The Commission reasonably found these measures sufficient to address concerns associated with disturbing contaminated soil at the Compressor Station site. Rehearing Order P 67, JA ____; Certificate Order P 129, JA ____.

4. Traffic

Project construction will have a temporary impact on road traffic. Environmental Assessment at 2-137, JA _____. To address that impact, Algonquin developed site-specific Traffic Management Plans, including a plan for the construction of the Station. Rehearing Order P 85, JA ____; Environmental Assessment at 2-138, JA _____. The Station Traffic Management Plan demonstrated that weekday traffic is greater northbound along Route 3A in the morning and southbound in the evening. Rehearing Order P 86, JA _____. Construction vehicles will travel in the opposite direction of peak volumes (i.e. southbound on 3A in the morning and northbound in the evening). *Id.* Construction hours would typically be 7:00 am to 6:00 pm, which means that construction workers will be at the site prior to morning peak commuter hours (7:30 am to 8:30 am) and will not leave the site until after the end of the evening rush (5:00 pm to 6:00 pm). *Id.* The Plan also shows that peak construction personnel for the Compressor Station would be 110 workers, with an overall average of 75 workers; the addition of these workers on

the road during off-peak hours will be below average traffic volumes and well below peak traffic volumes during the day. *Id.*

The Commission found that this Traffic Plan would help mitigate traffic impacts. *Id.* P 85, JA _____. *See also* Environmental Assessment at 2-138, JA _____ (finding impacts on traffic adequately minimized to the extent practicable).

Petitioners fault the Commission for not revising the Environmental Assessment when Algonquin moved the staging area for Station construction to the other side of Route 3A. Petitioner Brief at 73-74. The Commission reasonably concluded that the relocation was not a substantial change that would require a revised Environmental Assessment or alter the conclusion that the construction would not have a significant impact on traffic. Rehearing Order P 88, JA _____. Construction travel would continue to travel in the opposite direction of existing peak traffic and outside of peak commuting hours, and therefore the relocation would not result in substantial changes to the traffic analysis. *Id.*

5. Greenhouse Gas Emissions

Petitioners assert that the Commission failed adequately to analyze the Project's direct and indirect effects on greenhouse gas emissions and climate change. Petitioner Brief at 74-76. The Environmental Assessment addressed the Project's direct effect on greenhouse gas emissions and climate change by: estimating greenhouse gas emissions associated with Project construction (17,391

metric tons per year, CO₂-equivalent) and operation (207,579 metric tons per year, CO₂ equivalent) (Certificate Order P 120, JA ____ (citing Environmental Assessment at 2-93 – 2-96, JA ____ - ____); Rehearing Order P 117, JA ____); identifying potential impacts of climate change in the Project region (Rehearing Order P 117, JA ____ (citing Environmental Assessment at 2-142, JA ____)); addressing mitigation measures proposed by Algonquin to minimize greenhouse gas emissions (*id.* (citing Environmental Assessment at 2-96, JA ____)); addressing the impacts of climate change on the Project (e.g., future sea level risk and storm surge) (*id.* (citing Environmental Assessment at 2-3, JA ____)); and providing a comparison of the Project against state and regional climate change goals (*id.* (citing Environmental Assessment at 2-143, JA ____)).

Based upon these analyses, the Commission concluded that the Project's addition of natural gas coupled with the minimization of emissions would not cause significant impacts on climate change. Rehearing Order P 118, JA ____ (citing Environmental Assessment at 2-143, JA ____) (the Project's "relatively small incremental contribution to [greenhouse gases]" would not have any direct impact on the environment in the Project area). *See also* Certificate Order P 110, JA ____ (citing Environmental Assessment at 2-140, JA ____) (no significant impacts on regional air quality from the Project); *id.* P 113, JA ____ (with the mitigation measures proposed by Pipelines, the construction and operation of

Project facilities are expected to remain in compliance with air quality standards and are not expected to have a significant impact on air quality in the Project area).

Petitioners argue that the Commission failed to consider the effect of the Project on the targets outlined in the Massachusetts Global Warming Solutions Act to reduce greenhouse gas emissions to 80% below 1990 levels by 2050 and 25% by 2020. Petitioner Brief at 76-78. To the contrary, the Environmental Assessment compared the Project against state and regional climate change goals. Certificate Order P 201, JA ____ (citing Environmental Assessment at 2-143, JA ____). Specifically, the Environmental Assessment identified three state and regional energy initiatives in New England which recommend increasing the availability and use of natural gas. Rehearing Order P 118 & n.275, JA ____ (listing initiatives). *See also* Certificate Order P 73, JA ____.

As to Massachusetts, the Commission found the project is consistent with the Massachusetts Executive Office of Energy and Environmental Affairs Strategic Plan for 2013 to 2016, issued in 2013, which recommends initiatives to increase availability of low-cost natural gas. *Id.* (citing Environmental Assessment at 2-143, JA ____); Rehearing Order P 118, JA _____. Further, that Office attributes progress toward the 2020 greenhouse gas reduction goal to a combination of economic factors including the declining price of natural gas, and recommends an increased role for natural gas in achieving 2050 goals. Certificate Order P 201,

JA ____; Rehearing Order P 118, JA _____. The Office notes that the trend toward increased use of natural gas is tempered by natural gas supply constraints.

Rehearing Order P 118, JA _____. The Commission found that the Project would support the relief of natural gas supply constraints, consistent with state plans. *Id.* Therefore, the Commission affirmed the Environmental Assessment's conclusion that the Project's addition of natural gas coupled with the minimization of emissions is consistent with state plans and would not cause significant impacts on climate change. *Id.* (citing Environmental Assessment at 2-143, JA ____).

Petitioners assert that the Commission was required to analyze the cumulative effects on greenhouse gas emissions and climate change of the upstream production of the gas to be transported by the Project and the downstream combustion end-use of the gas. Petitioner Brief at 74-75 (citing *Sierra Club*, 867 F.3d 1375). In particular, Petitioners fault the Commission's analysis of the impact of gas production from Marcellus shale. Petitioner Brief at 78-80.

As the Commission found, however, such a broad cumulative effects analysis is not required under NEPA because of the limited scope of the Project. Rehearing Order PP 121-22, JA ____-____; Certificate Order P 116, JA _____. As this Court has recognized, NEPA requirements are governed by a rule of reason. *Pub. Citizen*, 541 U.S. 752, 767 (2004); *Mayo v. Reynolds*, 875 F.3d 11, 20 (D.C. Cir. 2017). The Council on Environmental Quality 2016 *Final Guidance on*

Consideration of Greenhouse Gas Emissions and the Effects of Climate Change, cited Petitioner Brief at 74-75 (withdrawn in 2017, *see* Rehearing Order P 116, JA ____), recognized that agencies have substantial discretion in determining the scope of the cumulative impacts analysis, and that scope should relate to the magnitude of a project's environmental impacts. Certificate Order P 116, JA _____. *See, e.g.*, CEQ Final Guidance at 17 (finding it inconsistent with the rule of reason to require an Environmental Impact Statement for every Federal action that may cause greenhouse gas emissions regardless of the magnitude of those emissions) (available at <https://ceq.doe.gov>).

Although not required by NEPA, to provide additional information to the public, the Commission nevertheless estimated the upstream impacts from gas production -- assuming that all Project gas would be produced from Marcellus shale -- and the downstream impacts associated with end-use combustion. Certificate Order PP 117-122, JA ____-____. The Commission, however, was unable to predict the nature and extent of climate change associated with upstream production and downstream use, as there is no standard methodology to determine whether, and to what extent, a project's incremental contribution to greenhouse gas emissions would result in physical effects on the environment. Rehearing Order P 119, JA _____. Further the Commission has not identified a suitable method to

attribute discrete environmental effects to greenhouse gas emissions for use in a project-level analysis. *Id.*

Petitioners criticize this conclusion as inadequate under NEPA with regard to upstream Project impacts on Marcellus shale development. Petitioner Brief at 78-80. However -- even assuming NEPA required this cumulative impacts analysis for this limited project -- the Commission reasonably has concluded in numerous proceedings that the environmental effects of natural gas production are neither caused by particular pipeline infrastructure projects nor are they a reasonably foreseeable consequence of approving a project. Rehearing Order PP 120-21, JA ____ - ____ (citing orders). *See Sierra Club*, 867 F.3d at 198-200 (affirming Department of Energy's conclusion that the indirect effects of increased natural gas production were not sufficiently causally related to the certificated project nor were such effects a reasonably foreseeable result of project approval). The Court in *Sierra Club* deferred to the Department's determination that it was too speculative to predict a project's incremental effect on production or to identify where extra production would occur, where shale and other unconventional sources of natural gas are widely distributed throughout the country. *Id.* at 199. *See also, e.g., Coal. For Responsible Growth & Resource Conservation v. FERC*, 485 Fed. Appx. 472, 474 (2d Cir. 2012) (affirming FERC's conclusion that the impacts of Marcellus shale development were not sufficiently causally related to the

certificated project to warrant more than a short discussion in the Environmental Assessment).

B. The Commission Reasonably Evaluated Station Impacts On Environmental Justice Communities.

Under the principle of environmental justice, as part of its environmental analysis, the Commission considers whether a project will have a disproportionately high and adverse impact on low-income and predominantly minority communities. *Sierra Club*, 867 F.3d at 1368. “As always with NEPA, an agency is not required to select the course of action that best serves environmental justice;” rather, the agency is required only to take a hard look at environmental justice issues. *Id.* The Commission’s analysis was consistent with this requirement. Rehearing Order P 93, JA ____.

While the Environmental Assessment found that all proposed Project facilities would be located outside environmental justice communities, four environmental justice census tracts would be within a half-mile of the Weymouth Station site and would experience impacts from construction or operation of the Station. Rehearing Order P 94, JA ____ (citing Environmental Analysis at 2-79, JA ____). The Commission concluded that the Project would have no disproportionately high or adverse impact on these communities. Rehearing Order P 95, JA ____ (citing Environmental Assessment at 2-80, JA ____); Certificate Order P 187, JA ____.

Although Petitioners complain that the impact of the above-ground

Station exceeds the impact of replacing underground pipeline on other communities affected by the Project, Petitioner Brief at 83, the Commission found that the impact on the Weymouth communities would be similar to that experienced by the non-environmental justice communities surrounding the three existing compressor stations that are being expanded under the Project. Rehearing Order P 94, JA ____.

Petitioners also complain that the Station is co-located with a generating facility and a metering station. Petitioner Brief at 81-82. However, the purpose of that co-location was to minimize the overall impact of the Project, particularly the visual impact. Certificate Order P 112, JA ____.

The Station will be constructed on a peninsula that is currently a mixture of open and industrial land surrounded by the Fore River and other industrial sites. *Id.* The Station would be situated behind a row of existing evergreen trees to provide a visual screen to the east and northwest. *Id.* While the station would be visible to residents across the Fore River, it would be designed to blend in with the existing buildings on the peninsula and would not be out of character with the current visual landscape. *Id.* Therefore, the project location was chosen to minimize visual impacts on surrounding communities, including the environmental justice communities. *Id.* (citing Environmental Assessment at 2-136, JA ____).

As to interference with “quiet reflection” in the Kings Cove and Lovells Grove areas, Petitioner Brief at 83-84,

the Commission found that enjoyment of these parcels was already encumbered by proximity to the sewage pumping station, power plant and a major roadway.

Rehearing Order P 79, JA ____ (citing Environmental Assessment at 3-20, Appendix G Figure 1B, JA ____).

Appropriate mitigation measures further minimize potential impacts on environmental justice communities from dust, noise, traffic and air quality.

Rehearing Order P 95, JA ____; Certificate Order PP 112-114, JA ____-____. With the mitigation measures in place, the Commission found that Station construction and operation would not have a significant impact on air quality, Certificate Order P 113, JA ____, or result in a perceptible increase in noise at any Noise Sensitive Area. *Id.* P 114, JA _____. Algonquin will employ proven construction-related practices to control dust, and has developed a traffic management plan to minimize traffic. Rehearing P 95, JA ____; Environmental Assessment at 2-79, JA _____. *See supra* Argument Sections III(A)(1)-(5) (discussing project impacts).

Because noise and visual impacts are sufficiently mitigated, the Commission found no significant impact on property values. Rehearing Order PP 90, 97, JA ____, ____; Certificate Order P 178, JA ____-____. *See* Petitioner Brief at 84. The Project and the Station in particular would also bring benefits to the region via added tax revenues and construction jobs. Rehearing Order P 97, JA ____ (citing Environmental Assessment at 2-80, JA ____). Thus, the Commission reasonably

concluded that the Project, including the Station, will not result in any disproportionately high or adverse environmental or human health impacts on minority or low-income communities. Rehearing Order P 95, JA ____.

This Court's recent decision in *Sierra Club*, 867 F.3d at 1368-71, is instructive. In that case, the Court considered arguments that, as here, the placement of a compressor station unduly burdened an environmental justice community. *Id.* at 1370. The Court upheld the Commission orders based upon the Commission's consideration of the impacts of the compressor station on the community (noise and air quality will remain within acceptable levels), as well as the cumulative impact of adding an additional source of pollution to already existing polluting facilities (cumulative levels of noise and air pollution from all sources in the vicinity of the compressor station will remain below harmful thresholds). *Id.* at 1370-71. Similarly, the Commission here fully considered the Station's impacts, as well as the cumulative impact of the Station when combined with other nearby facilities, on the environmental justice communities around the proposed Station site. As this Court found, such an analysis "fulfill[s] NEPA's goal of guiding informed decisionmaking." *Id.* at 1370.

Petitioners claim "clear procedural defects in the [Environmental Assessment] process" based upon an unspecified number of outages that interfered with counsel's access to documents on FERC's website. Petitioner Brief at 84-85.

The Commission found that this allegation did not demonstrate that interested parties lacked a meaningful opportunity to participate in the process. Rehearing Order P 99, JA _____. *See, e.g. Myersville*, 783 F.3d at 464 (rejecting arguments regarding information access where petitioners were not deprived of opportunity to comment on or challenge evidence). During weekdays, the Commission has user assistance for its website, and there is an alternative website where docket information can be accessed in an outage. Rehearing Order P 99, JA _____. Additionally, under Commission regulations, applicants must make copies of an application available in accessible locations in each county throughout the project area, and must serve a complete copy of the filing on a requesting party. *Id.* Moreover, as in *Myersville*, Petitioners fail to identify what they would have done differently had they obtained earlier access to documents. *See* 783 F.3d at 464.

C. The Commission Reasonably Determined That An Environmental Impact Statement Was Not Required.

Petitioners argue that the Commission violated NEPA by failing to prepare an Environmental Impact Statement. Petitioner Brief at 50-57. The Court's role in reviewing an agency decision not to prepare an Environmental Impact Statement is limited to ensuring that no arguably significant consequences have been ignored. *Myersville*, 783 F.3d at 1322. This Court overturns an agency's decision to issue a finding of no significant impact, and therefore not to prepare an Environmental

Impact Statement, only if the decision was arbitrary, capricious, or an abuse of discretion. *Taxpayers of Mich.*, 433 F.3d at 861.

Council on Environmental Quality regulations provide that whether a project's impacts on the environment will be significant depends on context and intensity. Rehearing Order P 26, JA ____ (citing 40 C.F.R. § 1508.27). With regard to intensity, the Council's regulations set forth 10 factors agencies should consider, including, as relevant here: the effect on public health or safety, the unique characteristics of the geographic area, the degree to which the effects on the quality of the human environment are likely to be highly controversial, and the degree to which the possible effects are highly uncertain or involve unique or unknown risks. *Id.* (citing 40 C.F.R. § 1508.27(b)). The Commission reasonably concluded that these factors did not warrant preparation of an Environmental Impact Statement. *Id.*; Certificate Order P 70, JA ____.

1. Public Safety

Petitioners argue that the Weymouth Compressor Station threatens the public safety because of its proximity to residential areas, a major roadway, a sewage pumping station, hazardous materials and the Fore River Bridge.

Petitioner Brief at 52. As discussed in preceding sections III(A)(1) (safety) and III(A)(3) (coal ash), the Environmental Assessment adequately addressed public safety concerns and concluded that the Station would not result in a significant

increase in risk to the nearby public. Rehearing Order P 27, JA ____ (citing Environmental Assessment at 2-112 - 2-123, JA ____-____). Pipelines will be required to implement safety measures during construction and operation of the Project and follow a written integrity management program as required by the Pipeline Safety Administration. *Id.* (citing Environmental Assessment at 2-115, JA ____). The Commission may appropriately rely on the Pipeline Safety Administration's expertise and historical incident data in concluding that the Project will not significantly increase the risk to human safety. *Id. See, e.g., EarthReports*, 828 F.3d 958-59 (affirming reliance on opinions and standards of other expert authorities in reviewing safety considerations).

With regard to the Station's location in a hurricane inundation zone, Petitioner Brief at 52-53, the Environmental Assessment specifically considered the Station's location and the public safety risks associated with flash flooding, storm surge, and sea level rise. Rehearing Order P 28, JA ____ (citing Environmental Assessment at 2-3, JA ____). The Commission agreed with the Environmental Assessment's conclusion that the proposed Station design would minimize these risks. *Id.* The permanent station footprint will not be in a flood zone and the Station will be elevated 19 feet above sea level and will be designed to mitigate the effects of projected sea level rise and storm surge over a 50-year period. *Id.* P 34, JA ____.

2. Unique Geography

Petitioners argue that the Station will impair the public's use of the Kings Cove and Lovells Grove conservation areas. Petitioner Brief at 53-54. As discussed in preceding sections III(A)(2) (noise) and III(B) (environmental justice), the Environmental Assessment concluded that the impacts on Kings Cove and Lovell Grove would be sufficiently minimized. Rehearing Order P 29, JA ____ (citing Environmental Assessment at 2-65 - 2-66, JA ____-____). The parcels will not be directly impacted by construction or operation of the Station. *Id.* As discussed in Section III(B), the Station's visual impact will be minimized by siting it behind existing mature trees and designing it to blend in with other existing industrial buildings on the same site. Certificate Order PP 111-112, JA ____-____. As discussed in Section III(A)(2), the Environmental Assessment concluded that the Station would not result in a perceptible noise increase at the parcels, which are already located near a major roadway and a developed industrial area. *Id.* P 220, JA _____. Although Petitioners mention emissions from the Station, Petitioner Brief at 53, they do not challenge the Commission's conclusion that Station emissions of hazardous air pollutants would not result in significant effects on air quality in the Project area. *See* Rehearing Order P 111, JA _____. In any event, the Station's effect on air quality as challenged by the Intervenors is discussed *infra* at Section IV(D).

3. Highly Controversial Impacts

Petitioners contend that Project effects on the human environment qualify as controversial because opponents of the Project raised “dozens of impacts” that the Commission viewed as minor. Petitioner Brief at 54-55. For an action to be “highly controversial” for NEPA purposes, however, there must be a dispute over the size, nature or effect of the action, rather than simply the existence of vigorous opposition or conflicting views among experts. Rehearing Order P 31, JA ____.

See, e.g., Fund for Animals v. Frizzell, 530 F.2d 982, 988 n.15 (D.C. Cir. 1975) (“certainly something more is required besides the fact that some people may be highly agitated and be willing to go to court over the matter”).

This Court has rejected claims that an action is highly controversial where “petitioners’ evidence is simply insufficient to question the agency’s analysis of the ‘size, nature or effect’ of the proposed action.” *Town of Cave Creek, Ariz. v. FAA*, 325 F.3d 320, 331 (D.C. Cir. 2003). *See also, e.g., Hillsdale Envtl. Loss Prevention, Inc. v. Army Corps of Engineers*, 702 F.3d 1156, 1181-82 (10th Cir. 2012) (where agency took the requisite hard look at all alleged impacts, petitioners cannot demonstrate controversy). Here, the Commission took the requisite hard look at all impacts alleged by Petitioners, and therefore Petitioners have not demonstrated that the Project is highly controversial. Rehearing Order P 31, JA ____.

4. Unique Or Unknown Risks

Petitioners argue that the Commission must prepare an Environmental Impact Statement because the environmental effects are highly uncertain. Petitioner Brief at 55-57. Petitioners again point to alleged safety risks in the siting of the Compressor Station and the lack of emergency response and evacuation plans for the Station. *See id.* at 56. As the Commission found, however, the Environmental Assessment discusses that the Pipelines will develop an emergency response plan specific to the Station in accordance with Pipeline Safety Administration regulations. Rehearing Order P 32, JA ____ (citing Environmental Assessment at 2-117, JA ____). The Environmental Assessment lists the key elements of the plan and details the training that must take place for personnel to respond to any emergency that may arise. *Id.* Finally, after considering historical nationwide incident data, the Environmental Assessment concluded that the Project would not result in a significant risk to human safety. *Id.* (citing Environmental Assessment at 2-122, 2-143, JA ____, ____). Given this analysis, the Commission reasonably found that the Project does not present unique or unknown risks that weigh in favor of preparing an Environmental Impact Statement. *Id.*

5. Best Practices Guidance

Petitioners contend that the Commission's determination not to prepare an Environmental Impact Statement ignored its 2015 publication, *Suggested Best*

Practices for Industry Outreach Programs to Stakeholders. Petitioner Brief at 57.

That publication, which provides guidance on outreach for project applicants, describes three project categories to help determine the appropriate level of outreach. Certificate Order PP 67-68, JA ___, ___. The first category is projects requiring an Environmental Impact Statement, which includes “projects comprised of large diameter pipelines in new rights-of-way and/or with new major aboveground facilities near population centers.” Federal Energy Regulatory Commission Office of Energy Projects, Division of Gas, *Environment & Engineering’s Suggested Best Practices for Industry Outreach to Stakeholders*, July 2015 at 11.⁶

This guidance, while not binding on the Commission, does not suggest that an Environmental Impact Statement would be prepared in these circumstances. Certificate Order PP 68-70, JA ___-___. The Project is not a large diameter pipeline in a new right-of-way, as the majority of the 6.3 miles of replacement pipeline is in the same location (typically the same ditch) as the existing pipeline. *Id.* P 70 n.56, JA _____. Further, the Station is not a “major aboveground facility.” In fact, Commission regulations specifically provide that Environmental Assessments will be prepared for construction of compression facilities. *Id.* (citing

⁶ This publication is available at:
<https://www.ferc.gov/industries/gas/enviro/guidelines/stakeholder-brochure.pdf>.

18 C.F.R. § 380.5(b)(1)). Accordingly, the Project is not in the category of projects requiring preparation of a more extensive Environmental Impact Statement. *Id.*

Based on the analysis in the Environmental Assessment, the extent and comments received during the scoping period, and the scope of the project, which primarily involves replacement of existing facilities, the Commission agreed with the conclusion in the Environmental Assessment that the impacts of the project can be sufficiently mitigated to support a finding of no significant impact, and thus an Environmental Impact Statement was not required. *Id.* See, e.g., *Cabinet Mountains Wilderness*, 685 F.2d at 682 (a finding of no significant impact can be predicated upon agency's imposition of mitigation measures); *Pub. Citizen*, 848 F.2d at 266 (agency's finding of no significant impact is entitled to deference). That Petitioners disagree with the Commission's ultimate conclusion that the identified impacts do not rise to the level of significance, absent a clear error of judgment, is an insufficient basis upon which to overturn FERC's decision. See, e.g., *Myersville*, 783 F.3d at 1322 (court's role in reviewing agency decision not to prepare an Environmental Impact Statement is limited to ensuring no arguably significant consequences have been ignored); *Mayo*, 875 F.3d at 20 (decision not to prepare an Environmental Impact Statement is subject to a rule of reason). FERC's determination that the Project would have no significant impact and

therefore that an Environmental Impact Statement was not required was reasonable and should be upheld.

IV. INTERVENORS' ADDITIONAL ARGUMENTS SHOULD BE DISREGARDED AND, IF CONSIDERED, ARE WITHOUT MERIT.

A. The Court Should Disregard Intervenor's Additional Arguments That Were Not Raised By Petitioners.

In their brief, Intervenor's raise three issues not raised by Petitioners: that the Commission's Office of Energy Projects Branch Chief lacked authority to authorize construction, Intervenor Brief at 28-31; that the Environmental Assessment was prepared by a third-party consultant with a conflict of interest, *id.* at 25-28; and that the Commission failed adequately to consider Hazardous Air Pollutants in finding no significant impact on the human environment, *id.* at 22-25. Because Petitioners did not raise these issues, under its settled practice this Court should not consider them.

As a general matter, “[i]ntervenors may only argue issues that have been raised by the principal parties; they simply lack standing to expand the scope of the case to matters not addressed by the petitioners in their request for review.” *Petro Star Inc. v. FERC*, 835 F.3d 97, 110 (D.C. Cir. 2016) (quoting *Nat’l Ass’n of Reg. Util. Comm’rs v. ICC*, 41 F.3d 721, 729 (D.C. Cir. 1994)). *See also Vinson v. Wash. Gas Light Co.*, 321 U.S. 489, 498 (1944) (“[A]n intervenor is admitted to

the proceeding as it stands, and in respect of the pending issues, but is not permitted to enlarge those issues.”).

“Although the Court may, in its discretion, address challenges raised only by intervenors,” the Court generally does so ““only in extraordinary cases.”” *Time Warner Entertainment Co., L.P. v. FCC*, 56 F.3d 151, 202 (D.C. Cir. 1995) (quoting *Nat’l Ass’n of Reg. Util. Comm’rs*, 41 F.3d at 730) (additional argument raised by intervenor not properly before the Court even though intervenor filed its motion to intervene within the time limit for filing a petition for review)). No extraordinary circumstances exist here. Rather, as in *Time Warner*, Intervenors participated in the agency proceedings and had the opportunity to petition for review of the challenged Commission orders. 56 F.3d at 202. Having foregone that opportunity, Intervenors should not be heard to protest the Commission orders on grounds not argued by Petitioners. *Id.*

B. Intervenors’ Challenge To The Construction Orders Is Not Properly Before This Court And Is Without Merit.

1. The Court Lacks Jurisdiction Over Intervenors’ Challenges To The Construction Orders.

This Court lacks jurisdiction to consider Intervenors’ challenge to the delegated authority used to issue orders authorizing construction, Intervenor Brief at 28-30, on multiple, independent grounds. First, while the Coalition Petitioners petitioned for review of the March 2017 and April 2017 Construction Orders in

Docket No. 17-1139, no party petitioned for review of the Construction Rehearing Order, JA ____, which denied rehearing of those orders. Under section 19(b) of the Natural Gas Act, 15 U.S.C. § 717r(b), an aggrieved party can obtain judicial review of a Commission order by filing a petition for review “within sixty days after the order of the Commission upon the application for rehearing.” This Court’s jurisdiction thus is limited to cases in which a petitioner has first sought rehearing and “then promptly brings the petition to our court after the order denying rehearing.” *Smith Lake Improvement & Stakeholders Ass’n v. FERC*, 809 F.3d 55, 56 (D.C. Cir. 2015); *see also Williston Basin*, 475 F.3d at 335 (judicial review is available only if a party files within 60 days of the agency’s ruling on rehearing).

Further, the Construction Orders authorized construction in Connecticut and New York. *See* R. 1258, JA ____; R. 1264, JA _____. As the Commission found, Intervenor, who live near the Massachusetts Weymouth Compressor Station site, lack standing to challenge construction authorizations in these other states. *See* Construction Rehearing Order P 11, JA _____. Like all parties seeking review in this Court, Intervenor must show Article III standing. *See Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016); *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 732-33 (D.C. Cir. 2003). They must be able to show a particularized injury that affects them in a personal and individual way. *Spokeo*, 136 S. Ct. at 1548. Intervenor

have made no showing that construction activities in Connecticut or New York cause them injury. Construction Rehearing Order P 11, JA _____. *See, e.g., Nat'l Comm. For New River, Inc. v. FERC*, 433 F.3d 830, 832 (D.C. Cir. 2005) (environmental petitioners lacked standing where they alleged no “specific environmental and aesthetic harms” from pipeline route realignments).

2. The Branch Chief Held A Valid Delegation Of Authority To Issue The Construction Orders.

Should the Court proceed to the merits, it should find that the Construction Orders were issued subject to a valid sub-delegation of authority to the Office of Energy Projects Chief of Gas Branch 2. In the first instance, this Court has found that the Commission’s subsequent ratification of the delegation of authority and the order issued under that authority conclusively resolves any potential delegation problems. *Murray*, 629 F.3d at 236. In *Murray*, as here, challenges were raised to the authority of the Chief of Gas Branch 2 to issue construction orders. *Id.* The Court rejected those arguments based on the Commission’s statement on rehearing that it expressly “‘affirm[ed] the practice of delegating authority to Commission staff” and “adopted the Director’s action, through his designee, as [its] own.”” *Id.* (quoting *Rockies Express Pipeline, LLC*, 128 FERC ¶ 61,045 P 23 (2009)). Here, in the Construction Rehearing Order, the Commission made the same ratification. Construction Rehearing Order P 26, JA ____ (“we affirm the practice of delegating authority to Commission staff in our certificate orders, and we adopt the [Office of

Energy Projects] Director's action, through his designees, as our own"). Thus, this Court's decision in *Murray* compels rejection of Intervenor's arguments.

In any event, the delegation was well within the Commission's authority. The Commission may delegate to its designated agents the authority to conduct any hearing or other inquiry necessary or appropriate to its functions. Construction Rehearing Order P 17, JA ____ (citing 42 U.S.C. § 7171(g)). The Commission delegates certain authority through regulation, *see, e.g.*, 18 C.F.R. § 375.308 (delegating certain authority to the Director of the Office of Energy Projects), and also routinely delegates authority through its orders. Construction Rehearing Order P 17, JA ____.

Here, the authority to issue notices to proceed with construction was not delegated to the Director of Energy Projects under the Commission's regulations (*see* Intervenor Brief at 30, arguing 18 C.F.R. § 375.308 does not authorize delegation), but rather was delegated through the Certificate Order's Environmental Conditions. Construction Rehearing Order PP 18, 24, JA ____, ____ (citing Certificate Order at Appendix B, Environmental Conditions 1, 2, 5, 9, 15, 17 and 19, JA ____, ____, ____, ____, ____). The Certificate Order includes conditions that must be met before construction or operation may begin; the Director's review ensures that those conditions have been met before authorizing construction activities. *Id.* P 18, JA ____.

Although the Certificate Order delegates such authority to the Director, *see* Intervenor Brief at 29, Commission regulations permit officials to whom authority is delegated to sub-delegate that authority to their “designee,” defined as “the deputy of such official, the head of a division, or a comparable official as designated by the official to whom the direct delegation is made.” 18 C.F.R. § 375.301(b); Construction Rehearing Order P 19, JA _____. *See Nat’l Comm.*, 433 F.3d at 833 (affirming delegation to Deputy Director of Office of Energy Projects under 18 C.F.R. § 375.301(b)). Here, the Chief of Gas Branch 2 has direct responsibility for ensuring compliance with the Certificate environmental conditions. Construction Rehearing Order PP 19-20, JA ____-____. With respect to clearances for environmental conditions and authorization to begin construction, therefore, the Commission reasonably found that the Branch Chief is a “comparable official” to a deputy or division head, as required by 18 C.F.R. § 375.301(b). Construction Rehearing Order P 20, JA _____. *See, e.g., Freeport-McMoRan Corp. v. FERC*, 669 F.3d 302, 308 (D.C. Cir. 2012) (affording “substantial deference” to FERC’s interpretation of its own regulations); *Bluestone Energy Design, Inc. v. FERC*, 74 F.3d 1288, 1292 (D.C. Cir. 1996) (same).

The Commission in fact routinely delegates authority to Directors with the understanding that the Director may further delegate such authority to a designee, specifically including delegations to Branch Chiefs and similar officials.

Construction Rehearing Order P 19, JA ____ (citing *Rockies Express Pipeline, LLC*, 128 FERC ¶ 61,045 P 21 (2009), *aff'd*, *Murray*, 629 F.3d 231). Thus, *League of Women Voters of U.S. v. Newby*, 238 F. Supp. 3d 6, 12 (D.D.C. 2017), where the Court was unable to determine whether authority had been delegated in the absence of a consistent or longstanding practice, is inapposite. Accordingly, the delegation of authority to issue construction orders to the Branch Chief was a valid delegation of authority.

C. The Commission Reasonably Found No Conflict Of Interest Invalidating The Environmental Assessment.

The Council on Environmental Quality and the Commission each have issued standards on potential conflicts of interest among prospective government contractors. Both sets of standards impose disclosure requirements on contractors. The Council's standards (contained in the Code of Federal Regulations) state that contractors "shall execute a disclosure statement prepared by the lead agency, specifying that they have no financial or other interest in the outcome of the project." 40 C.F.R. § 1506.5(c); Rehearing Order P 13, JA _____. Similarly, under FERC's "organizational conflict of interest" procedures (which emanate from the Commission's *Handbook for Using Third-Party Contractors to Prepare Environmental Documents*), each prospective contractor must prepare a statement in which it discloses any recent or ongoing work and revenues for an applicant. Certificate Order P 57, JA _____. Commission staff reviews this statement carefully

before choosing a contractor to support it in conducting a NEPA analysis. *Id.* In general, if less than one percent of a contractor's business (for the current and preceding year) concerns a party that could be affected by the work being done, then the contractor is not considered to have a conflict of interest. *Id.*; Rehearing Order P 15, JA ____.

Staff's review of the third-party contractor retained to assist with the Project Environmental Assessment, Natural Resource Group, found no conflict of interest. Certificate Order P 57 & n.45, JA ____.

Natural Resource Group disclosed that it had provided Algonquin's parent, Spectra Energy Corporation, with services but received less than one percent of its total revenue from Spectra in any year. *Id.*; Rehearing Order P 16, JA ____.

See also Rehearing Order P 15 n.20, JA ____ (noting that the one-percent threshold is consistent with Office of Governmental Ethics regulations on *de minimis* financial interests); Intervenor Brief at 14 (citing letter from U.S. Senators indicating that Natural Resource Group derived 0.75% of its total income from Spectra or its affiliates in 2014). Therefore, Natural Resource Group's "repeat business from Algonquin's affiliates," Intervenor Brief at 26, was disclosed to the Commission, which reasonably found that it did not give rise to a conflict of interest. *See, e.g., Cmtys. Against Runway Expansion, Inc. v. FAA*, 355 F.3d 678, 687 (D.C. Cir. 2004) (that project owner had engaged contractor for four other projects was not a disqualifying conflict of interest).

Intervenors have not shown that Natural Resource Group has any “agreement, enforceable promise or guarantee of future work.” Intervenor Brief at 26 (citing *Ass’n Working for Aurora’s Residential Env’t v. Colo. Dep’t of Transp.*, 153 F.3d 1122, 1128 (10th Cir. 1998)). This situation is not like *Citizens*, 938 F.2d at 202, cited Intervenor Brief at 27, where the contractor failed to file a disclosure statement and allegedly had an interest in project approval because it would affect the scope of another engagement the contractor had with the applicant.

Even if Intervenor could show a conflict, there is no cause to invalidate the Environmental Assessment if the objectivity and integrity of the NEPA process has not been compromised. *Cmtys. Against Runway Expansion*, 355 F.3d at 686; *Citizens*, 938 F.2d at 202. As the court held in *Aurora*, even if an expectation of future work could be considered a conflict of interest, the agency’s supervision of the third party contractor would be “sufficient to cure any defect arising from that expectation” and to protect “the integrity and objectivity” of the Environmental Impact Statement. 153 F.3d at 1129. *See also, e.g., Cmtys. Against Runway Expansion*, 355 F.3d at 687 (claim that contractor bias undermined agency NEPA review lacked merit where “[t]he record confirms that the [agency] consistently exercised control over the scope, content and development of the [Environmental Impact Statement]).”

Here, Natural Resource Group worked under the direction of Commission staff, who maintained complete control over the scope, content, quality and schedule of Natural Resource Group's work. Rehearing Order P 12, JA ____.

While Natural Resource Group tracked comments and filings and prepared drafts of data requests and environmental documents, all material was reviewed, edited, and issued by Commission staff. Certificate Order P 58, JA ____.

The Commission exclusively made all impact determinations. Rehearing Order P 12, JA ____.

The Commission thus maintained ultimate responsibility for full compliance with NEPA. *Id.*; Certificate Order P 58, JA ____.

D. The Commission's Consideration Of Hazardous Air Pollutants Fully Satisfied NEPA.

Under the Clean Air Act, the Environmental Protection Agency sets national ambient air quality standards for six common pollutants, known as criteria pollutants. *See* Clean Air Act section 109, 42 U.S.C. § 7409; Environmental Assessment at 2-87, JA ____.

Primary standards protect human health, including sensitive populations such as children, the elderly and asthmatics. *Id.* Secondary standards set limits to protect the public from environmental and property damage. *Id.*

The Environmental Assessment here concluded that the air dispersion modeling performed for the Weymouth Compressor Station, when combined with existing background air quality, demonstrated that the Station will not cause or contribute to a violation of the national ambient air quality standards. Certificate

Order PP 197-98, JA ____-____ (citing Environmental Assessment at Table 2.7.4-6, 2-97 – 2-98, JA ____-____); Rehearing Order P 103, JA _____. *See Sierra Club*, 867 F.3d at 1370 n.7 (upholding Commission’s reliance upon national ambient air quality standards “as a standard of comparison for air-quality impacts”).

Further, section 112(b)(1) of the Clean Air Act, 42 U.S.C. §7412(b)(1), identifies nearly 200 hazardous air pollutants for which the Environmental Protection Agency must establish emission standards. *See Nat’l Ass’n for Surface Finishing v. EPA*, 795 F.3d 1, 4 (D.C. Cir. 2015); Environmental Assessment at 2-90, JA _____. If a facility is deemed to be a “major source” of hazardous air pollutants, it is subject to additional hazardous air pollutant limitations and air permitting and review. Certificate Order P 206, JA _____. A facility is a “major source” if it has the potential to emit 10 tons or more of a single hazardous air pollutant or 25 tons or more of any combination of hazardous air pollutants. *Id.* *See* 42 U.S.C. § 7412(a). The Environmental Assessment determined that the largest single hazardous air pollutant emitted by the Weymouth Compressor Station is hexane at about 0.1 tons per year (1 percent of the major source threshold), and the potential total combined hazardous air pollutant emissions for the Station is approximately 0.8 tons per year (3.2 percent of the major source threshold). Certificate Order P 206, JA ____ (citing Environmental Assessment Table 2.7.4-3, JA ____). Thus, the Commission determined that the hazardous air

pollutant emissions from the Station would be well below the major source threshold for hazardous air pollutants, and are not significant. *Id.*

Based upon these facts, the Commission rejected calls for an expanded health impact assessment for the Station. *Id.* P 207, JA _____. *See* Intervenor Brief at 23-24. “In general, performing a detailed modeling analysis for facilities with such small [hazardous air pollutant] emissions, as is the case for the Weymouth Compressor Station, is overly burdensome and unnecessary.” Certificate Order P 207, JA _____. “The mere scale of emissions in relation to major source thresholds is sufficient to determine that impacts are not significant for the purposes of NEPA.” *Id.* *See also* Rehearing Order PP 104-05, JA ____-__.

Nevertheless, to address public concerns regarding health impacts, the Environmental Assessment discussed the potential health impacts from compressor stations and hazardous air pollutants based on a previous detailed health risk assessment conducted for another project. Certificate Order P 208, JA _____ (citing Environmental Assessment at 2-98, JA _____); Rehearing Order P 105, JA _____. This assessment evaluated the acute and chronic health risks of exposure to hazardous air pollutants from natural gas combustion and blowdown events from three compressor stations. Environmental Assessment at 2-98, JA _____. The results of the analysis showed that the cancer and non-cancer health risks of short-term and long-term exposure to all constituents of natural gas during combustion, venting, or

a full station blowdown event would be below established benchmarks (i.e. are safe) to protect the general population and sensitive subgroups (those with health conditions, children, elderly, etc.). *Id.* This conclusion, moreover, was based upon overestimated risks as a result of using overly-conservative assumptions about the exposure of impacted individuals. Certificate Order P 208, JA ____; Rehearing Order P 105, JA ____.

The proposed Weymouth Station is smaller than the modeled compressors and would emit lower quantities of pollutants. Certificate Order P 209, JA ____; Rehearing Order P 105, JA ____.

This analysis therefore demonstrated that even a compressor station with significantly greater emissions would fall below established benchmarks to protect the general population and sensitive subgroups. Rehearing Order P 107, JA ____.

The Environmental Assessment therefore reasonably concluded that the health risks from operation of the Project facilities would not be significant. Certificate Order P 209, JA ____; Rehearing Order P 105, JA ____.

In consideration of the low emissions of hazardous air pollutants from the Station, regulatory oversight for hazardous air pollutants under the Clean Air Act, and low risks indicated in the compressor station analysis, the Commission agreed with the Environmental Assessment that the health risks from hazardous air pollutants associated with the Project facilities will not be significant. Certificate Order P 209, JA ____.

The Commission also considered the Station's cumulative air quality impacts when combined with other area sources of emissions. Rehearing Order P 111, JA ____; Certificate Order P 113, JA _____. *See* Intervenor Brief at 23-24. The Massachusetts Department of Environmental Protection provided regional source data for large emission sources near the Station that were identified as potentially significantly impacting air quality. Rehearing Order P 111 & n.259, JA ____ (citing Environmental Assessment at 2-125, JA ____). These other nearby emission sources included the Fore River Energy Center, the Braintree Electric Light Department facility, the Twin Rivers Technologies facility, and the Massachusetts Water Resources Authority Sludge Processing Facility. *Id.* (citing Environmental Assessment at 2-140, JA ____). That modeling demonstrated that long-term operation of the Station would not result in any significant cumulative impacts on regional air quality. *Id.* *See also, e.g.*, Certificate Order P 113, JA ____ (the combined impact of the Station with other nearby large emission sources would be below established thresholds to protect human health and welfare) (citing Environmental Assessment at 2-138, JA ____).

Intervenors point to an Environmental Protection Agency letter recommending an expanded health assessment based on the concern that the Commission's risk assessment failed to "consider[] the specific meteorological and topographical features of the Weymouth site or the location of the nearest resident

areas, including [environmental justice] areas.” *See* Intervenor Brief at 7-8 (quoting letter); *id.* at 23-24. As the Commission explained, however, the air-quality modeling here did consider “site-specific terrain, ground cover, historical meteorological data (including wind speed, wind direction, and inversions), and proposed air emissions from each compressor station.” Certificate Order P 211, JA ____; Rehearing Order P 109, JA _____. The facility air impacts were added to background air quality concentrations to estimate future air quality near the Station and compare the future air quality to the national ambient air quality standards. Certificate Order P 211, JA _____. Any minor differences in configuration between the Station and the modeled compressors did not invalidate the comparison in risks. Rehearing Order P 107, JA _____. *See, e.g.*, Certificate Order P 209, JA _____ (while the modeled compressors may be sited on larger parcels of land, the Station is surrounded by water on three sides). Nor did minor differences require the Commission to prepare a detailed analysis to determine “the readily apparent fact” that the impacts associated with the Station were not significant for purposes of NEPA. Rehearing Order P 107, JA _____.

As for the letter’s reference to environmental justice areas, *see* Intervenor Brief at 7-8, 23-24, these communities were, in fact, considered as part of the Commission’s air-quality assessment. *See* Certificate Order P 113, JA ____; Environmental Assessment at 2-138 - 140, JA ____-____; *see also supra* Section

III(B) (discussing environmental justice issue). Thus, the Commission reasonably rejected the grounds upon which the Environmental Protection Agency suggested an extended health assessment. Intervenor Brief at 22-24. *See, e.g., Citizens*, 938 F.2d at 201 (lead agency bears ultimate responsibility for preparing environmental statement and fulfilled its responsibility by considering EPA criticism of methodology and deciding that enough had been done).

Accordingly, as to this issue as well as the issues previously discussed, the Commission's reasonable explanations in the orders on review demonstrate that "no arguably significant consequences have been ignored" in the agency's reliance on the Environmental Assessment. *Myersville*, 783 F.3d at 1322 ("Our role in reviewing an agency's decision not to prepare an [environmental impact statement] is a limited one, designed primarily to ensure that no arguably significant consequences have been ignored.") (internal quotation marks omitted). The Commission's reasonable determinations should be affirmed. *See Del. Riverkeeper*, 857 F.3d at 394 ("So long as the agency takes a hard look at the environmental consequences, NEPA 'does not mandate particular results.'") (quoting *Robertson*, 490 U.S. at 350).

CONCLUSION

For the foregoing reasons, to the extent they are not dismissed for lack of jurisdiction, the petitions for review should be denied and the Commission's orders should be affirmed in all respects.

Respectfully submitted,

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May 29, 2018

FERC Order	Petition For Review	Rehearing Request
Certificate Order, R. 1235, JA ____ (1/25/17)	17-1135 (Weymouth, 5/24/17)) 17-1139 (Coalition, 5/25/17)	All filed 2/24/17: Town, R. 1242, JA ____ Coalition, R. 1246, JA ____ Peters, R. 1245, JA ____ Intervenors, R. 1244, JA ____
Tolling Order, R. 1257, JA ____ (3/27/17)	17-1139 (Coalition, 5/25/17) 17-1176 (Weymouth, 7/19/17)	Weymouth, R. 1271, JA ____ (4/26/17)
March Construction Order, R. 1258, JA ____ (3/27/17)	17-1139 (Coalition, 5/25/17)	Coalition, R. 1263, JA ____ (4/7/17) Intervenors, R. 1272, JA ____ (4/26/17)
April Construction Order, R. 1264, JA ____ (4/13/17)	17-1139 (Coalition, 5/25/17)	Intervenors, R. 1272, JA ____ (4/26/17)
First May Tolling Order, R. 1276, JA ____ (5/8/17)	17-1139 (Coalition, 5/25/17)	
Second May Tolling Order, R. 1283, JA ____ (5/24/17)	17-1176 (Weymouth, 7/19/17)	
Tolling Rehearing Order, R. 1323, JA ____ (8/21/17)	17-1220 (Weymouth, 10/18/17)	
Rehearing Order, R. 1388, JA ____ (12/13/17)	18-1039 (Weymouth, 2/6/18) 18-1042 (Coalition, 2/9/18)	
Construction Rehearing Order, JA ____ (12/21/17)	None	

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g) and Circuit Rule 32(e) and this Court's Order of March 5, 2018, I certify that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B), as modified in this Court's order to 21,000 words, because this brief contains 19,706 words, including the chart appended at the end of the brief, and excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and Circuit Rule 32(e)(1).

I further certify that this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in Times New Roman 14-point font using Microsoft Word 2013.

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May 29, 2018

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

AMENDMENTS

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

§ 704. Actions reviewable

Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final is final for the purposes of this section whether or not there has been presented or determined an application for a declaratory order, for any form of reconsideration, or, unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority.

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

HISTORICAL AND REVISION NOTES

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

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

§ 705. Relief pending review

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

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

HISTORICAL AND REVISION NOTES

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

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

§ 706. Scope of review

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

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) hold unlawful and set aside agency action, findings, and conclusions found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

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

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

HISTORICAL AND REVISION NOTES

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

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

ABBREVIATION OF RECORD

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

CHAPTER 8—CONGRESSIONAL REVIEW OF AGENCY RULEMAKING

Sec.	
801.	Congressional review.
802.	Congressional disapproval procedure.
803.	Special rule on statutory, regulatory, and judicial deadlines.
804.	Definitions.
805.	Judicial review.
806.	Applicability; severability.
807.	Exemption for monetary policy.
808.	Effective date of certain rules.

§ 801. Congressional review

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

(i) a copy of the rule;

(ii) a concise general statement relating to the rule, including whether it is a major rule; and

(iii) the proposed effective date of the rule.

(B) On the date of the submission of the report under subparagraph (A), the Federal agency pro-

amended Pub. L. 95-95, title I, §§104, 105, title IV, §401(a), Aug. 7, 1977, 91 Stat. 689, 790; Pub. L. 101-549, title I, §§108(a)-(c), (o), 111, Nov. 15, 1990, 104 Stat. 2465, 2466, 2469, 2470; Pub. L. 105-362, title XV, §1501(b), Nov. 10, 1998, 112 Stat. 3294.)

CODIFICATION

November 15, 1990, referred to in subsec. (e), was in the original “enactment of the Clean Air Act Amendments of 1989”, and was translated as meaning the date of the enactment of Pub. L. 101-549, popularly known as the Clean Air Act Amendments of 1990, to reflect the probable intent of Congress.

Section was formerly classified to section 1857c-3 of this title.

PRIOR PROVISIONS

A prior section 108 of act July 14, 1955, was renumbered section 115 by Pub. L. 91-604 and is classified to section 7415 of this title.

AMENDMENTS

1998—Subsec. (f)(3), (4). Pub. L. 105-362 struck out par. (3), which required reports by the Secretary of Transportation and the Administrator to be submitted to Congress by Jan. 1, 1993, and every 3 years thereafter, reviewing and analyzing existing State and local air quality related transportation programs, evaluating achievement of goals, and recommending changes to existing programs, and par. (4), which required that in each report after the first report the Secretary of Transportation include a description of the actions taken to implement the changes recommended in the preceding report.

1990—Subsec. (e). Pub. L. 101-549, §108(a), inserted first sentence and struck out former first sentence which read as follows: “The Administrator shall, after consultation with the Secretary of Transportation and the Secretary of Housing and Urban Development and State and local officials and within 180 days after August 7, 1977, and from time to time thereafter, publish guidelines on the basic program elements for the planning process assisted under section 7505 of this title.”

Subsec. (f)(1). Pub. L. 101-549, §108(b), in introductory provisions, substituted present provisions for provisions relating to Federal agencies, States, and air pollution control agencies within either 6 months or one year after Aug. 7, 1977.

Subsec. (f)(1)(A). Pub. L. 101-549, §108(b), substituted present provisions for provisions relating to information prepared in cooperation with Secretary of Transportation, regarding processes, procedures, and methods to reduce certain pollutants.

Subsec. (f)(3), (4). Pub. L. 101-549, §111, added pars. (3) and (4).

Subsec. (g). Pub. L. 101-549, §108(o), added subsec. (g).

Subsec. (h). Pub. L. 101-549, §108(c), added subsec. (h).

1977—Subsec. (a)(1)(A). Pub. L. 95-95, §401(a), substituted “emissions of which, in his judgment, cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare” for “which in his judgment has an adverse effect on public health or welfare”.

Subsec. (b)(1). Pub. L. 95-95, §104(a), substituted “cost of installation and operation, energy requirements, emission reduction benefits, and environmental impact of the emission control technology” for “technology and costs of emission control”.

Subsec. (c). Pub. L. 95-95, §104(b), inserted provision directing the Administrator, not later than six months after Aug. 7, 1977, to revise and reissue criteria relating to concentrations of NO₂ over such period (not more than three hours) as he deems appropriate, with the criteria to include a discussion of nitric and nitrous acids, nitrites, nitrates, nitrosamines, and other carcinogenic and potentially carcinogenic derivatives of oxides of nitrogen.

Subsecs. (e), (f). Pub. L. 95-95, §105, added subsecs. (e) and (f).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as a note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7409. National primary and secondary ambient air quality standards

(a) Promulgation

(1) The Administrator—

(A) within 30 days after December 31, 1970, shall publish proposed regulations prescribing a national primary ambient air quality standard and a national secondary ambient air quality standard for each air pollutant for which air quality criteria have been issued prior to such date; and

(B) after a reasonable time for interested persons to submit written comments thereon (but no later than 90 days after the initial publication of such proposed standards) shall by regulation promulgate such proposed national primary and secondary ambient air quality standards with such modifications as he deems appropriate.

(2) With respect to any air pollutant for which air quality criteria are issued after December 31, 1970, the Administrator shall publish, simultaneously with the issuance of such criteria and information, proposed national primary and secondary ambient air quality standards for any such pollutant. The procedure provided for in paragraph (1)(B) of this subsection shall apply to the promulgation of such standards.

(b) Protection of public health and welfare

(1) National primary ambient air quality standards, prescribed under subsection (a) of this section shall be ambient air quality standards the attainment and maintenance of which in the judgment of the Administrator, based on such criteria and allowing an adequate margin of safety, are requisite to protect the public health. Such primary standards may be revised in the same manner as promulgated.

(2) Any national secondary ambient air quality standard prescribed under subsection (a) of this section shall specify a level of air quality the attainment and maintenance of which in the judgment of the Administrator, based on such criteria, is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air. Such secondary standards may be revised in the same manner as promulgated.

(c) National primary ambient air quality standards for nitrogen dioxide

The Administrator shall, not later than one year after August 7, 1977, promulgate a national primary ambient air quality standard for NO₂ concentrations over a period of not more than 3 hours unless, based on the criteria issued under section 7408(c) of this title, he finds that there is no significant evidence that such a standard for such a period is requisite to protect public health.

(d) Review and revision of criteria and standards; independent scientific review committee; appointment; advisory functions

(1) Not later than December 31, 1980, and at five-year intervals thereafter, the Administrator shall complete a thorough review of the criteria published under section 7408 of this title and the national ambient air quality standards promulgated under this section and shall make such revisions in such criteria and standards and promulgate such new standards as may be appropriate in accordance with section 7408 of this title and subsection (b) of this section. The Administrator may review and revise criteria or promulgate new standards earlier or more frequently than required under this paragraph.

(2)(A) The Administrator shall appoint an independent scientific review committee composed of seven members including at least one member of the National Academy of Sciences, one physician, and one person representing State air pollution control agencies.

(B) Not later than January 1, 1980, and at five-year intervals thereafter, the committee referred to in subparagraph (A) shall complete a review of the criteria published under section 7408 of this title and the national primary and secondary ambient air quality standards promulgated under this section and shall recommend to the Administrator any new national ambient air quality standards and revisions of existing criteria and standards as may be appropriate under section 7408 of this title and subsection (b) of this section.

(C) Such committee shall also (i) advise the Administrator of areas in which additional knowledge is required to appraise the adequacy and basis of existing, new, or revised national ambient air quality standards, (ii) describe the research efforts necessary to provide the required information, (iii) advise the Administrator on the relative contribution to air pollution concentrations of natural as well as anthropogenic activity, and (iv) advise the Administrator of any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such national ambient air quality standards.

(July 14, 1955, ch. 360, title I, § 109, as added Pub. L. 91-604, § 4(a), Dec. 31, 1970, 84 Stat. 1679; amended Pub. L. 95-95, title I, § 106, Aug. 7, 1977, 91 Stat. 691.)

CODIFICATION

Section was formerly classified to section 1857c-4 of this title.

PRIOR PROVISIONS

A prior section 109 of act July 14, 1955, was renumbered section 116 by Pub. L. 91-604 and is classified to section 7416 of this title.

AMENDMENTS

1977—Subsec. (c). Pub. L. 95-95, § 106(b), added subsec. (c).

Subsec. (d). Pub. L. 95-95, § 106(a), added subsec. (d).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as a note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employment.

ROLE OF SECONDARY STANDARDS

Pub. L. 101-549, title VIII, § 817, Nov. 15, 1990, 104 Stat. 2697, provided that:

“(a) REPORT.—The Administrator shall request the National Academy of Sciences to prepare a report to the Congress on the role of national secondary ambient air quality standards in protecting welfare and the environment. The report shall:

“(1) include information on the effects on welfare and the environment which are caused by ambient concentrations of pollutants listed pursuant to section 108 [42 U.S.C. 7408] and other pollutants which may be listed;

“(2) estimate welfare and environmental costs incurred as a result of such effects;

“(3) examine the role of secondary standards and the State implementation planning process in preventing such effects;

“(4) determine ambient concentrations of each such pollutant which would be adequate to protect welfare and the environment from such effects;

“(5) estimate the costs and other impacts of meeting secondary standards; and

“(6) consider other means consistent with the goals and objectives of the Clean Air Act [42 U.S.C. 7401 et seq.] which may be more effective than secondary standards in preventing or mitigating such effects.

“(b) SUBMISSION TO CONGRESS; COMMENTS; AUTHORIZATION.—(1) The report shall be transmitted to the Congress not later than 3 years after the date of enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990].

“(2) At least 90 days before issuing a report the Administrator shall provide an opportunity for public

and implementing standards for existing power plants, and, at the same time, with leaders in the power sector, labor leaders, non-governmental organizations, other experts, tribal officials, other stakeholders, and members of the public, on issues informing the design of the program;

(ii) consistent with achieving regulatory objectives and taking into account other relevant environmental regulations and policies that affect the power sector, tailor regulations and guidelines to reduce costs;

(iii) develop approaches that allow the use of market-based instruments, performance standards, and other regulatory flexibilities;

(iv) ensure that the standards enable continued reliance on a range of energy sources and technologies;

(v) ensure that the standards are developed and implemented in a manner consistent with the continued provision of reliable and affordable electric power for consumers and businesses; and

(vi) work with the Department of Energy and other Federal and State agencies to promote the reliable and affordable provision of electric power through the continued development and deployment of cleaner technologies and by increasing energy efficiency, including through stronger appliance efficiency standards and other measures.

SEC. 2. *General Provisions.* (a) This memorandum shall be implemented consistent with applicable law, including international trade obligations, and subject to the availability of appropriations.

(b) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to a department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) You are hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

§ 7412. Hazardous air pollutants

(a) Definitions

For purposes of this section, except subsection (r) of this section—

(1) Major source

The term “major source” means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants. The Administrator may establish a lesser quantity, or in the case of radionuclides different criteria, for a major source than that specified in the previous sentence, on the basis of the potency of the air pollutant, persistence, potential for bioaccumulation, other characteristics of the air pollutant, or other relevant factors.

(2) Area source

The term “area source” means any stationary source of hazardous air pollutants that is not a major source. For purposes of this section, the term “area source” shall not include motor vehicles or nonroad vehicles subject to regulation under subchapter II.

(3) Stationary source

The term “stationary source” shall have the same meaning as such term has under section 7411(a) of this title.

(4) New source

The term “new source” means a stationary source the construction or reconstruction of which is commenced after the Administrator first proposes regulations under this section establishing an emission standard applicable to such source.

(5) Modification

The term “modification” means any physical change in, or change in the method of operation of, a major source which increases the actual emissions of any hazardous air pollutant emitted by such source by more than a de minimis amount or which results in the emission of any hazardous air pollutant not previously emitted by more than a de minimis amount.

(6) Hazardous air pollutant

The term “hazardous air pollutant” means any air pollutant listed pursuant to subsection (b) of this section.

(7) Adverse environmental effect

The term “adverse environmental effect” means any significant and widespread adverse effect, which may reasonably be anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas.

(8) Electric utility steam generating unit

The term “electric utility steam generating unit” means any fossil fuel fired combustion unit of more than 25 megawatts that serves a generator that produces electricity for sale. A unit that cogenerates steam and electricity and supplies more than one-third of its potential electric output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale shall be considered an electric utility steam generating unit.

(9) Owner or operator

The term “owner or operator” means any person who owns, leases, operates, controls, or supervises a stationary source.

(10) Existing source

The term “existing source” means any stationary source other than a new source.

(11) Carcinogenic effect

Unless revised, the term “carcinogenic effect” shall have the meaning provided by the Administrator under Guidelines for Carcinogenic Risk Assessment as of the date of enactment.¹ Any revisions in the existing Guidelines shall be subject to notice and opportunity for comment.

¹ See References in Text note below.

(b) List of pollutants**(1) Initial list**

The Congress establishes for purposes of this section a list of hazardous air pollutants as follows:

CAS number	Chemical name	CAS number	Chemical name
75070	Acetaldehyde	121142	2,4-Dinitrotoluene
60355	Acetamide	123911	1,4-Dioxane (1,4-Diethyleneoxide)
75058	Acetonitrile	122667	1,2-Diphenylhydrazine
98862	Acetophenone	106898	Epichlorohydrin (1-Chloro-2,3-epoxypropane)
53963	2-Acetylaminofluorene	106887	1,2-Epoxybutane
107028	Acrolein	140885	Ethyl acrylate
79061	Acrylamide	100414	Ethyl benzene
79107	Acrylic acid	51796	Ethyl carbamate (Urethane)
107131	Acrylonitrile	75003	Ethyl chloride (Chloroethane)
107051	Allyl chloride	106934	Ethylene dibromide (Dibromoethane)
92671	4-Aminobiphenyl	107062	Ethylene dichloride (1,2-Dichloroethane)
62533	Aniline	107211	Ethylene glycol
90040	o-Anisidine	151564	Ethylene imine (Aziridine)
1332214	Asbestos	75218	Ethylene oxide
71432	Benzene (including benzene from gasoline)	96457	Ethylene thiourea
92875	Benzidine	75343	Ethylidene dichloride (1,1-Dichloroethane)
98077	Benzotrichloride	50000	Formaldehyde
100447	Benzyl chloride	76448	Heptachlor
92524	Biphenyl	118741	Hexachlorobenzene
117817	Bis(2-ethylhexyl)phthalate (DEHP)	87683	Hexachlorobutadiene
542881	Bis(chloromethyl)ether	77474	Hexachlorocyclopentadiene
75252	Bromoform	67721	Hexachloroethane
106990	1,3-Butadiene	822060	Hexamethylene-1,6-diisocyanate
156627	Calcium cyanamide	680319	Hexamethylphosphoramide
105602	Caprolactam	110543	Hexane
133062	Captan	302012	Hydrazine
63252	Carbaryl	7647010	Hydrochloric acid
75150	Carbon disulfide	7664393	Hydrogen fluoride (Hydrofluoric acid)
56235	Carbon tetrachloride	123319	Hydroquinone
463581	Carbonyl sulfide	78591	Isophorone
120809	Catechol	58899	Lindane (all isomers)
133904	Chloramben	108316	Maleic anhydride
57749	Chlordane	67561	Methanol
7782505	Chlorine	72435	Methoxychlor
79118	Chloroacetic acid	74839	Methyl bromide (Bromomethane)
532274	2-Chloroacetophenone	74873	Methyl chloride (Chloromethane)
108907	Chlorobenzene	71556	Methyl chloroform (1,1,1-Trichloroethane)
510156	Chlorobenzilate	78933	Methyl ethyl ketone (2-Butanone)
67663	Chloroform	60344	Methyl hydrazine
107302	Chloromethyl methyl ether	74884	Methyl iodide (Iodomethane)
126998	Chloroprene	108101	Methyl isobutyl ketone (Hexone)
1319773	Cresols/Cresylic acid (isomers and mixture)	624839	Methyl isocyanate
95487	o-Cresol	80626	Methyl methacrylate
108394	m-Cresol	1634044	Methyl tert butyl ether
106445	p-Cresol	101144	4,4-Methylene bis(2-chloroaniline)
98828	Cumene	75092	Methylene chloride (Dichloromethane)
94757	2,4-D, salts and esters	101688	Methylene diphenyl diisocyanate (MDI)
3547044	DDE	101779	4,4'-Methylenedianiline
334883	Diazomethane	91203	Naphthalene
132649	Dibenzofurans	98953	Nitrobenzene
96128	1,2-Dibromo-3-chloropropane	92933	4-Nitrobiphenyl
84742	Dibutylphthalate	100027	4-Nitrophenol
106467	1,4-Dichlorobenzene(p)	79469	2-Nitropropane
91941	3,3-Dichlorobenzidine	684935	N-Nitroso-N-methylurea
111444	Dichloroethyl ether (Bis(2-chloroethyl)ether)	62759	N-Nitrosodimethylamine
542756	1,3-Dichloropropene	59892	N-Nitrosomorpholine
62737	Dichlorvos	56382	Parathion
111422	Diethanolamine	82688	Pentachloronitrobenzene (Quintobenzene)
121697	N,N-Diethyl aniline (N,N-Dimethylaniline)	87865	Pentachlorophenol
64675	Diethyl sulfate	108952	Phenol
119904	3,3-Dimethoxybenzidine	106503	p-Phenylenediamine
60117	Dimethyl aminoazobenzene	75445	Phosgene
119937	3,3'-Dimethyl benzidine	7803512	Phosphine
79447	Dimethyl carbamoyl chloride	7723140	Phosphorus
68122	Dimethyl formamide	85449	Phthalic anhydride
57147	1,1-Dimethyl hydrazine	1336363	Polychlorinated biphenyls (Aroclors)
131113	Dimethyl phthalate	1120714	1,3-Propane sultone
77781	Dimethyl sulfate	57578	beta-Propiolactone
534521	4,6-Dinitro-o-cresol, and salts	123386	Propionaldehyde
51285	2,4-Dinitrophenol	114261	Propoxur (Baygon)
		78875	Propylene dichloride (1,2-Dichloropropane)
		75569	Propylene oxide
		75558	1,2-Propylenimine (2-Methyl aziridine)
		91225	Quinoline
		106514	Quinone
		100425	Styrene
		96093	Styrene oxide

CAS number	Chemical name
1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin
79345	1,1,2,2-Tetrachloroethane
127184	Tetrachloroethylene (Perchloroethylene)
7550450	Titanium tetrachloride
108883	Toluene
95807	2,4-Toluene diamine
584849	2,4-Toluene diisocyanate
95534	o-Toluidine
8001352	Toxaphene (chlorinated camphene)
120821	1,2,4-Trichlorobenzene
79005	1,1,2-Trichloroethane
79016	Trichloroethylene
95954	2,4,5-Trichlorophenol
88062	2,4,6-Trichlorophenol
121448	Triethylamine
1582098	Trifluralin
540841	2,2,4-Trimethylpentane
108054	Vinyl acetate
593602	Vinyl bromide
75014	Vinyl chloride
75354	Vinylidene chloride (1,1-Dichloroethylene)
1330207	Xylenes (isomers and mixture)
95476	o-Xylenes
108383	m-Xylenes
106423	p-Xylenes
0	Antimony Compounds
0	Arsenic Compounds (inorganic including arsine)
0	Beryllium Compounds
0	Cadmium Compounds
0	Chromium Compounds
0	Cobalt Compounds
0	Coke Oven Emissions
0	Cyanide Compounds ¹
0	Glycol ethers ²
0	Lead Compounds
0	Manganese Compounds
0	Mercury Compounds
0	Fine mineral fibers ³
0	Nickel Compounds
0	Polycyclic Organic Matter ⁴
0	Radionuclides (including radon) ⁵
0	Selenium Compounds

NOTE: For all listings above which contain the word "compounds" and for glycol ethers, the following applies: Unless otherwise specified, these listings are defined as including any unique chemical substance that contains the named chemical (i.e., antimony, arsenic, etc.) as part of that chemical's infrastructure.

¹X'CN where X = H' or any other group where a formal dissociation may occur. For example KCN or Ca(CN)₂.

²Includes mono- and di- ethers of ethylene glycol, diethylene glycol, and triethylene glycol R-(OCH₂CH₂)_n-OR' where n = 1, 2, or 3

R = alkyl or aryl groups

R' = R, H, or groups which, when removed, yield glycol ethers with the structure: R-(OCH₂CH₂)_n-OH. Polymers are excluded from the glycol category.

³Includes mineral fiber emissions from facilities manufacturing or processing glass, rock, or slag fibers (or other mineral derived fibers) of average diameter 1 micrometer or less.

⁴Includes organic compounds with more than one benzene ring, and which have a boiling point greater than or equal to 100°C.

⁵A type of atom which spontaneously undergoes radioactive decay.

(2) Revision of the list

The Administrator shall periodically review the list established by this subsection and publish the results thereof and, where appropriate, revise such list by rule, adding pollutants which present, or may present, through inhalation or other routes of exposure, a threat of adverse human health effects (including, but not limited to, substances which

are known to be, or may reasonably be anticipated to be, carcinogenic, mutagenic, teratogenic, neurotoxic, which cause reproductive dysfunction, or which are acutely or chronically toxic) or adverse environmental effects whether through ambient concentrations, bioaccumulation, deposition, or otherwise, but not including releases subject to regulation under subsection (r) of this section as a result of emissions to the air. No air pollutant which is listed under section 7408(a) of this title may be added to the list under this section, except that the prohibition of this sentence shall not apply to any pollutant which independently meets the listing criteria of this paragraph and is a precursor to a pollutant which is listed under section 7408(a) of this title or to any pollutant which is in a class of pollutants listed under such section. No substance, practice, process or activity regulated under subchapter VI of this chapter shall be subject to regulation under this section solely due to its adverse effects on the environment.

(3) Petitions to modify the list

(A) Beginning at any time after 6 months after November 15, 1990, any person may petition the Administrator to modify the list of hazardous air pollutants under this subsection by adding or deleting a substance or, in case of listed pollutants without CAS numbers (other than coke oven emissions, mineral fibers, or polycyclic organic matter) removing certain unique substances. Within 18 months after receipt of a petition, the Administrator shall either grant or deny the petition by publishing a written explanation of the reasons for the Administrator's decision. Any such petition shall include a showing by the petitioner that there is adequate data on the health or environmental defects² of the pollutant or other evidence adequate to support the petition. The Administrator may not deny a petition solely on the basis of inadequate resources or time for review.

(B) The Administrator shall add a substance to the list upon a showing by the petitioner or on the Administrator's own determination that the substance is an air pollutant and that emissions, ambient concentrations, bioaccumulation or deposition of the substance are known to cause or may reasonably be anticipated to cause adverse effects to human health or adverse environmental effects.

(C) The Administrator shall delete a substance from the list upon a showing by the petitioner or on the Administrator's own determination that there is adequate data on the health and environmental effects of the substance to determine that emissions, ambient concentrations, bioaccumulation or deposition of the substance may not reasonably be anticipated to cause any adverse effects to the human health or adverse environmental effects.

(D) The Administrator shall delete one or more unique chemical substances that contain a listed hazardous air pollutant not having a CAS number (other than coke oven emissions,

²So in original. Probably should be "effects".

time the success of the measures in reducing pollution loads and improving water quality.

(3) Publication

The Administrator, in consultation with the Secretary, shall publish—

(A) proposed guidance pursuant to this subsection not later than 6 months after November 5, 1990; and

(B) final guidance pursuant to this subsection not later than 18 months after November 5, 1990.

(4) Notice and comment

The Administrator shall provide to coastal States and other interested persons an opportunity to provide written comments on proposed guidance under this subsection.

(5) Management measures

For purposes of this subsection, the term “management measures” means economically achievable measures for the control of the addition of pollutants from existing and new categories and classes of nonpoint sources of pollution, which reflect the greatest degree of pollutant reduction achievable through the application of the best available nonpoint pollution control practices, technologies, processes, siting criteria, operating methods, or other alternatives.

(h) Authorization of appropriations

(1) Administrator

There is authorized to be appropriated to the Administrator for use for carrying out this section not more than \$1,000,000 for each of fiscal years 1992, 1993, and 1994.

(2) Secretary

(A) Of amounts appropriated to the Secretary for a fiscal year under section 318(a)(4)¹ of the Coastal Zone Management Act of 1972, as amended by this Act, not more than \$1,000,000 shall be available for use by the Secretary for carrying out this section for that fiscal year, other than for providing in the form of grants under subsection (f).

(B) There is authorized to be appropriated to the Secretary for use for providing in the form of grants under subsection (f) not more than—

- (i) \$6,000,000 for fiscal year 1992;
- (ii) \$12,000,000 for fiscal year 1993;
- (iii) \$12,000,000 for fiscal year 1994; and
- (iv) \$12,000,000 for fiscal year 1995.

(i) Definitions

In this section—

(1) the term “Administrator” means the Administrator of the Environmental Protection Agency;

(2) the term “coastal State” has the meaning given the term “coastal state” under section 304 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453);

(3) each of the terms “coastal waters” and “coastal zone” has the meaning that term has in the Coastal Zone Management Act of 1972 [16 U.S.C. 1451 et seq.];

(4) the term “coastal management agency” means a State agency designated pursuant to

section 306(d)(6) of the Coastal Zone Management Act of 1972 [16 U.S.C. 1455(d)(6)];

(5) the term “land use” includes a use of waters adjacent to coastal waters; and

(6) the term “Secretary” means the Secretary of Commerce.

(Pub. L. 101-508, title VI, §6217, Nov. 5, 1990, 104 Stat. 1388-314; Pub. L. 102-587, title II, §2205(b)(24), Nov. 4, 1992, 106 Stat. 5052.)

REFERENCES IN TEXT

The Coastal Zone Management Act of 1972, referred to in subsecs. (a)(2) and (i)(3), 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 this chapter (§1451 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 1451 of this title and Tables.

This Act, referred to in subsecs. (a)(2) and (c)(2)(B), is Pub. L. 101-508, Nov. 5, 1990, 104 Stat. 1388, known as the Omnibus Budget Reconciliation Act of 1990. For complete classification of this Act to the Code, see Tables.

Section 318(a) of the Coastal Zone Management Act of 1972, referred to in subsec. (h)(2)(A), which is classified to section 1464(a) of this title, was amended by Pub. L. 104-150, §4(1), June 3, 1996, 110 Stat. 1381, and, as so amended, does not contain a par. (4).

CODIFICATION

Section was enacted as part of the Coastal Zone Act Reauthorization Amendments of 1990 and also as part of the Omnibus Budget Reconciliation Act of 1990, and not as part of the Coastal Zone Management Act of 1972 which comprises this chapter.

AMENDMENTS

1992—Subsec. (i)(3). Pub. L. 102-587 struck out comma after “coastal waters” and inserted “Zone” before “Management”.

§ 1456. Coordination and cooperation

(a) Federal agencies

In carrying out his functions and responsibilities under this chapter, the Secretary shall consult with, cooperate with, and, to the maximum extent practicable, coordinate his activities with other interested Federal agencies.

(b) Adequate consideration of views of Federal agencies

The Secretary shall not approve the management program submitted by a state pursuant to section 1455 of this title unless the views of Federal agencies principally affected by such program have been adequately considered.

(c) Consistency of Federal activities with State management programs; Presidential exemption; certification

(1)(A) Each Federal agency activity within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs. A Federal agency activity shall be subject to this paragraph unless it is subject to paragraph (2) or (3).

(B) After any final judgment, decree, or order of any Federal court that is appealable under section 1291 or 1292 of title 28, or under any other applicable provision of Federal law, that a specific Federal agency activity is not in compli-

¹ See References in Text note below.

ance with subparagraph (A), and certification by the Secretary that mediation under subsection (h) is not likely to result in such compliance, the President may, upon written request from the Secretary, exempt from compliance those elements of the Federal agency activity that are found by the Federal court to be inconsistent with an approved State program, if the President determines that the activity is in the paramount interest of the United States. No such exemption shall be granted on the basis of a lack of appropriations unless the President has specifically requested such appropriations as part of the budgetary process, and the Congress has failed to make available the requested appropriations.

(C) Each Federal agency carrying out an activity subject to paragraph (1) shall provide a consistency determination to the relevant State agency designated under section 1455(d)(6) of this title at the earliest practicable time, but in no case later than 90 days before final approval of the Federal activity unless both the Federal agency and the State agency agree to a different schedule.

(2) Any Federal agency which shall undertake any development project in the coastal zone of a state shall insure that the project is, to the maximum extent practicable, consistent with the enforceable policies of approved state management programs.

(3)(A) After final approval by the Secretary of a state's management program, any applicant for a required Federal license or permit to conduct an activity, in or outside of the coastal zone, affecting any land or water use or natural resource of the coastal zone of that state shall provide in the application to the licensing or permitting agency a certification that the proposed activity complies with the enforceable policies of the state's approved program and that such activity will be conducted in a manner consistent with the program. At the same time, the applicant shall furnish to the state or its designated agency a copy of the certification, with all necessary information and data. Each coastal state shall establish procedures for public notice in the case of all such certifications and, to the extent it deems appropriate, procedures for public hearings in connection therewith. At the earliest practicable time, the state or its designated agency shall notify the Federal agency concerned that the state concurs with or objects to the applicant's certification. If the state or its designated agency fails to furnish the required notification within six months after receipt of its copy of the applicant's certification, the state's concurrence with the certification shall be conclusively presumed. No license or permit shall be granted by the Federal agency until the state or its designated agency has concurred with the applicant's certification or until, by the state's failure to act, the concurrence is conclusively presumed, unless the Secretary, on his own initiative or upon appeal by the applicant, finds after providing a reasonable opportunity for detailed comments from the Federal agency involved and from the state, that the activity is consistent with the objectives of this chapter or is otherwise necessary in the interest of national security.

(B) After the management program of any coastal state has been approved by the Secretary under section 1455 of this title, any person who submits to the Secretary of the Interior any plan for the exploration or development of, or production from, any area which has been leased under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) and regulations under such Act shall, with respect to any exploration, development, or production described in such plan and affecting any land or water use or natural resource of the coastal zone of such state, attach to such plan a certification that each activity which is described in detail in such plan complies with the enforceable policies of such state's approved management program and will be carried out in a manner consistent with such program. No Federal official or agency shall grant such person any license or permit for any activity described in detail in such plan until such state or its designated agency receives a copy of such certification and plan, together with any other necessary data and information, and until—

(i) such state or its designated agency, in accordance with the procedures required to be established by such state pursuant to subparagraph (A), concurs with such person's certification and notifies the Secretary and the Secretary of the Interior of such concurrence;

(ii) concurrence by such state with such certification is conclusively presumed as provided for in subparagraph (A), except if such state fails to concur with or object to such certification within three months after receipt of its copy of such certification and supporting information, such state shall provide the Secretary, the appropriate federal agency, and such person with a written statement describing the status of review and the basis for further delay in issuing a final decision, and if such statement is not so provided, concurrence by such state with such certification shall be conclusively presumed; or

(iii) the Secretary finds, pursuant to subparagraph (A), that each activity which is described in detail in such plan is consistent with the objectives of this chapter or is otherwise necessary in the interest of national security.

If a state concurs or is conclusively presumed to concur, or if the Secretary makes such a finding, the provisions of subparagraph (A) are not applicable with respect to such person, such state, and any Federal license or permit which is required to conduct any activity affecting land uses or water uses in the coastal zone of such state which is described in detail in the plan to which such concurrence or finding applies. If such state objects to such certification and if the Secretary fails to make a finding under clause (iii) with respect to such certification, or if such person fails substantially to comply with such plan as submitted, such person shall submit an amendment to such plan, or a new plan, to the Secretary of the Interior. With respect to any amendment or new plan submitted to the Secretary of the Interior pursuant to the preceding sentence, the applicable time period for purposes of concurrence by con-

(Pub. L. 95-91, title III, § 308, Aug. 4, 1977, 91 Stat. 581.)

§ 7158. Naval reactor and military application programs

The Division of Naval Reactors established pursuant to section 2035 of this title, and responsible for research, design, development, health, and safety matters pertaining to naval nuclear propulsion plants and assigned civilian power reactor programs is transferred to the Department under the Under Secretary for Nuclear Security, and such organizational unit shall be deemed to be an organizational unit established by this chapter.

(Pub. L. 95-91, title III, § 309, Aug. 4, 1977, 91 Stat. 581; Pub. L. 106-65, div. C, title XXXII, § 3294(c), Oct. 5, 1999, 113 Stat. 970.)

REFERENCES IN TEXT

This chapter, referred to in text, 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.

AMENDMENTS

1999—Pub. L. 106-65 struck out subsec. (a) designation before “The Division of Naval Reactors”, substituted “Under Secretary for Nuclear Security” for “Assistant Secretary to whom the Secretary has assigned the function listed in section 7133(a)(2)(E) of this title”, and struck out subsec. (b) which read as follows: “The Division of Military Application, established by section 2035 of this title, and the functions of the Energy Research and Development Administration with respect to the Military Liaison Committee, established by section 2037 of this title, are transferred to the Department under the Assistant Secretary to whom the Secretary has assigned those functions listed in section 7133(a)(5) of this title, and such organizational units shall be deemed to be organizational units established by this chapter.”

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-65 effective Mar. 1, 2000, see section 3299 of Pub. L. 106-65, set out as an Effective Date note under section 2401 of Title 50, War and National Defense.

TRANSFER OF FUNCTIONS

All national security functions and activities performed immediately before Oct. 5, 1999, by the Office of Naval Reactors transferred to the Administrator for Nuclear Security of the National Nuclear Security Administration of the Department of Energy, and the Deputy Administrator for Naval Reactors of the Administration to be assigned the responsibilities, authorities, and accountability for all functions of the Office of Naval Reactors under Executive Order No. 12344, set out as a note under section 2511 of Title 50, War and National Defense, see sections 2406 and 2481 of Title 50.

Pub. L. 98-525, title XVI, § 1634, Oct. 19, 1984, 98 Stat. 2649, which was formerly set out as a note under this section, was renumbered section 4101 of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, § 3141(d)(2), Nov. 24, 2003, 117 Stat. 1757, and is set out as a note under section 2511 of Title 50, War and National Defense.

§ 7159. Transfer to Department of Transportation

Notwithstanding section 7151(a) of this title, there are transferred to, and vested in, the Sec-

retary of Transportation all of the functions vested in the Administrator of the Federal Energy Administration by section 6361(b)(1)(B) of this title.

(Pub. L. 95-91, title III, § 310, Aug. 4, 1977, 91 Stat. 582.)

SUBCHAPTER IV—FEDERAL ENERGY REGULATORY COMMISSION

§ 7171. Appointment and administration

(a) Federal Energy Regulatory Commission; establishment

There is established within the Department an independent regulatory commission to be known as the Federal Energy Regulatory Commission.

(b) Composition; term of office; conflict of interest; expiration of terms

(1) The Commission shall be composed of five members appointed by the President, by and with the advice and consent of the Senate. One of the members shall be designated by the President as Chairman. Members shall hold office for a term of 5 years and may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office. Not more than three members of the Commission shall be members of the same political party. Any Commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A Commissioner may continue to serve after the expiration of his term until his successor is appointed and has been confirmed and taken the oath of Office, except that such Commissioner shall not serve beyond the end of the session of the Congress in which such term expires. Members of the Commission shall not engage in any other business, vocation, or employment while serving on the Commission.

(2) Notwithstanding the third sentence of paragraph (1), the terms of members first taking office after April 11, 1990, shall expire as follows:

(A) In the case of members appointed to succeed members whose terms expire in 1991, one such member's term shall expire on June 30, 1994, and one such member's term shall expire on June 30, 1995, as designated by the President at the time of appointment.

(B) In the case of members appointed to succeed members whose terms expire in 1992, one such member's term shall expire on June 30, 1996, and one such member's term shall expire on June 30, 1997, as designated by the President at the time of appointment.

(C) In the case of the member appointed to succeed the member whose term expires in 1993, such member's term shall expire on June 30, 1998.

(c) Duties and responsibilities of Chairman

The Chairman shall be responsible on behalf of the Commission for the executive and administrative operation of the Commission, including functions of the Commission with respect to (1) the appointment and employment of hearing examiners in accordance with the provisions of title 5, (2) the selection, appointment, and fixing of the compensation of such personnel as he

deems necessary, including an executive director, (3) the supervision of personnel employed by or assigned to the Commission, except that each member of the Commission may select and supervise personnel for his personal staff, (4) the distribution of business among personnel and among administrative units of the Commission, and (5) the procurement of services of experts and consultants in accordance with section 3109 of title 5. The Secretary shall provide to the Commission such support and facilities as the Commission determines it needs to carry out its functions.

(d) Supervision and direction of members, employees, or other personnel of Commission

In the performance of their functions, the members, employees, or other personnel of the Commission shall not be responsible to or subject to the supervision or direction of any officer, employee, or agent of any other part of the Department.

(e) Designation of Acting Chairman; quorum; seal

The Chairman of the Commission may designate any other member of the Commission as Acting Chairman to act in the place and stead of the Chairman during his absence. The Chairman (or the Acting Chairman in the absence of the Chairman) shall preside at all sessions of the Commission and a quorum for the transaction of business shall consist of at least three members present. Each member of the Commission, including the Chairman, shall have one vote. Actions of the Commission shall be determined by a majority vote of the members present. The Commission shall have an official seal which shall be judicially noticed.

(f) Rules

The Commission is authorized to establish such procedural and administrative rules as are necessary to the exercise of its functions. Until changed by the Commission, any procedural and administrative rules applicable to particular functions over which the Commission has jurisdiction shall continue in effect with respect to such particular functions.

(g) Powers of Commission

In carrying out any of its functions, the Commission shall have the powers authorized by the law under which such function is exercised to hold hearings, sign and issue subpoenas, administer oaths, examine witnesses, and receive evidence at any place in the United States it may designate. The Commission may, by one or more of its members or by such agents as it may designate, conduct any hearing or other inquiry necessary or appropriate to its functions, except that nothing in this subsection shall be deemed to supersede the provisions of section 556 of title 5 relating to hearing examiners.

(h) Principal office of Commission

The principal office of the Commission shall be in or near the District of Columbia, where its general sessions shall be held, but the Commission may sit anywhere in the United States.

(i) Commission deemed agency; attorney for Commission

For the purpose of section 552b of title 5, the Commission shall be deemed to be an agency.

Except as provided in section 518 of title 28, relating to litigation before the Supreme Court, attorneys designated by the Chairman of the Commission may appear for, and represent the Commission in, any civil action brought in connection with any function carried out by the Commission pursuant to this chapter or as otherwise authorized by law.

(j) Annual authorization and appropriation request

In each annual authorization and appropriation request under this chapter, the Secretary shall identify the portion thereof intended for the support of the Commission and include a statement by the Commission (1) showing the amount requested by the Commission in its budgetary presentation to the Secretary and the Office of Management and Budget and (2) an assessment of the budgetary needs of the Commission. Whenever the Commission submits to the Secretary, the President, or the Office of Management and Budget, any legislative recommendation or testimony, or comments on legislation, prepared for submission to Congress, the Commission shall concurrently transmit a copy thereof to the appropriate committees of Congress.

(Pub. L. 95-91, title IV, § 401, Aug. 4, 1977, 91 Stat. 582; Pub. L. 101-271, § 2(a), (b), Apr. 11, 1990, 104 Stat. 135.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (i) and (j), 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.

AMENDMENTS

1990—Subsec. (b). Pub. L. 101-271 designated existing provisions as par. (1), substituted "5 years" for "four years", struck out after third sentence "The terms of the members first taking office shall expire (as designated by the President at the time of appointment), two at the end of two years, two at the end of three years, and one at the end of four years.", substituted "A Commissioner may continue to serve after the expiration of his term until his successor is appointed and has been confirmed and taken the oath of Office, except that such Commissioner shall not serve beyond the end of the session of the Congress in which such term expires." for "A Commissioner may continue to serve after the expiration of his term until his successor has taken office, except that he may not so continue to serve for more than one year after the date on which his term would otherwise expire under this subsection.", and added par. (2).

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-271, § 2(c), Apr. 11, 1990, 104 Stat. 136, provided that: "The amendments made by this section [amending this section] apply only to persons appointed or reappointed as members of the Federal Energy Regulatory Commission after the date of enactment of this Act [Apr. 11, 1990]."

RENEWABLE ENERGY AND ENERGY CONSERVATION INCENTIVES

Pub. L. 101-549, title VIII, § 808, Nov. 15, 1990, 104 Stat. 2690, provided that:

"(a) DEFINITION.—For purposes of this section, 'renewable energy' means energy from photovoltaic, solar

§ 715l. Repealed. June 22, 1942, ch. 436, 56 Stat. 381

Section, acts Feb. 22, 1935, ch. 18, § 13, 49 Stat. 33; June 14, 1937, ch. 335, 50 Stat. 257; June 29, 1939, ch. 250, 53 Stat. 927, provided for expiration of this chapter on June 30, 1942.

§ 715m. Cooperation between Secretary of the Interior and Federal and State authorities

The Secretary of the Interior, in carrying out this chapter, is authorized to cooperate with Federal and State authorities.

(June 25, 1946, ch. 472, § 3, 60 Stat. 307.)

CODIFICATION

Section was not enacted as a part act Feb. 22, 1935, which comprises this chapter.

DELEGATION OF FUNCTIONS

Delegation of President's authority to Secretary of the Interior, see note set out under section 715j of this title.

CHAPTER 15B—NATURAL GAS

Sec.

- 717. Regulation of natural gas companies.
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- 717x. Conserved natural gas.
- 717y. Voluntary conversion of natural gas users to heavy fuel oil.
- 717z. Emergency conversion of utilities and other facilities.

§ 717. Regulation of natural gas companies

(a) Necessity of regulation in public interest

As disclosed in reports of the Federal Trade Commission made pursuant to S. Res. 83 (Seventieth Congress, first session) and other reports made pursuant to the authority of Congress, it is declared that the business of transporting and selling natural gas for ultimate distribution to

the public is affected with a public interest, and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest.

(b) Transactions to which provisions of chapter applicable

The provisions of this chapter shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, and to the importation or exportation of natural gas in foreign commerce and to persons engaged in such importation or exportation, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.

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

The provisions of this chapter shall not apply to any person engaged in or legally authorized to engage in the transportation in interstate commerce or the sale in interstate commerce for resale, of natural gas received by such person from another person within or at the boundary of a State if all the natural gas so received is ultimately consumed within such State, or to any facilities used by such person for such transportation or sale, provided that the rates and service of such person and facilities be subject to regulation by a State commission. The matters exempted from the provisions of this chapter by this subsection are declared to be matters primarily of local concern and subject to regulation by the several States. A certification from such State commission to the Federal Power Commission that such State commission has regulatory jurisdiction over rates and service of such person and facilities and is exercising such jurisdiction shall constitute conclusive evidence of such regulatory power or jurisdiction.

(d) Vehicular natural gas jurisdiction

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

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

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

AMENDMENTS

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

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

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

TERMINATION OF FEDERAL POWER COMMISSION;
 TRANSFER OF FUNCTIONS

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

STATE LAWS AND REGULATIONS

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

“(1) in closed containers; or

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

EMERGENCY NATURAL GAS ACT OF 1977

Pub. L. 95-2, Feb. 2, 1977, 91 Stat. 4, authorized President to declare a natural gas emergency and to require emergency deliveries and transportation of natural gas until the earlier of Apr. 30, 1977, or termination of emergency by President and provided for antitrust protection, emergency purchases, adjustment in charges for local distribution companies, relationship to Natural Gas Act, effect of certain contractual obligations, administrative procedure and judicial review, 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), the importation of the natural gas referred to in subsection (b), 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 find¹ 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 consult² 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.)

¹ So in original. Probably should be “finds”.

² So in original. Probably should be “coordinates and consults”.

with a new schedule filed by such natural gas company; but the Commission may order a decrease where existing rates are unjust, unduly discriminatory, preferential, otherwise unlawful, or are not the lowest reasonable rates.

(b) Costs of production and transportation

The Commission upon its own motion, or upon the request of any State commission, whenever it can do so without prejudice to the efficient and proper conduct of its affairs, may investigate and determine the cost of the production or transportation of natural gas by a natural-gas company in cases where the Commission has no authority to establish a rate governing the transportation or sale of such natural gas.

(June 21, 1938, ch. 556, § 5, 52 Stat. 823.)

§ 717e. Ascertainment of cost of property

(a) Cost of property

The Commission may investigate and ascertain the actual legitimate cost of the property of every natural-gas company, the depreciation 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 juris-

diction 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 equip-

ment 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

(d) Jurisdiction of courts of United States

In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, contracts, agreements, and other records. Such court may issue an order requiring such person to appear before the Commission or member or officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found or may be doing business. Any person who willfully shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in his or its power so to do, in obedience to the subpoena 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 established 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.

§ 717o. 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), 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) 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 oper-

ated 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 amend-

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

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

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

§ 157.12 Dismissal of application.

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

[17 FR 7386, Aug. 14, 1952]

§ 157.13 Form of exhibits to be attached to applications.

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

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

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

jected application may be incorporated by reference.

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

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

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

§ 157.14 Exhibits.

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

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required in various exhibits must be labeled with a location point name and code in conformity with the location name and code the pipeline has adopted in conformance with §284.13(f) of this chapter. Intervenor and persons becoming intervenors after the date of the Secretary's notice must be advised by the applicant of the afore-specified exhibits and testimony, and must be furnished with copies upon request. If this section requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined by §388.113(c) of this chapter, to any person, the applicant shall follow the procedures set out in §157.10(d).

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

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

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

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

rities of applicant—a detailed explanation of each such relationship.

(5) *Exhibit E—Other pending applications and filings.* A list of other applications and filings under sections 1, 3, 4 and 7 of the Natural Gas Act filed by the applicant which are pending before the Commission at the time of the filing of an application and which directly and significantly affect the application filed, including an explanation of any material effect the grant or denial of those other applications and filings will have on the application and of any material effect the grant or denial of the application will have on those other applications and filings.

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

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

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

(iii) Location and designation of each point of connection of existing and proposed facilities with:

(A) Main-line industrial customers, gas pipeline or distribution systems, showing towns and communities served and to be served at wholesale and retail, and

(B) Gas-producing and storage fields, or other sources of gas supply.

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

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(8) *Exhibit G—Flow diagrams showing daily design capacity and reflecting operation with and without proposed facilities added.* A flow diagram showing daily design capacity and reflecting operating conditions with only existing facilities in operation. A second flow diagram showing daily design capacity and reflecting operating conditions with both proposed and existing facilities in operation. Both flow diagrams shall include the following for the portion of the system affected:

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

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

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

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

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

(10) *Exhibit G-II—Flow diagram data.* Exhibits G and G-I shall be accompanied by a statement of engineering design data in explanation and support

of the diagrams and the proposed project, setting forth:

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

(ii) A description of the pipe and fittings to be installed, specifying the diameter, wall thickness, yield point, ultimate tensile strength, method of fabrication, and methods of testing proposed.

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

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

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

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

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

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time after the adjournment of a meeting closed to the public, the Commission shall make available to the public, in the Division of Public Information of the Commission, Washington, DC, the transcript, electronic recording, or minutes, or a transcription of any item on the agenda, or of any item of the testimony of any witness received at the meeting, except for such item or items of such discussion or testimony as the Director of Public Information determines may be withheld under §375.204. Copies of such transcript, or minutes, or a transcription of such recording shall be furnished to any person at the actual cost of duplication or transcription.

(2) The determination of the Director of the Division of Public Information to withhold information pursuant to paragraph (f)(1) of this section may be appealed to the General Counsel or the General Counsel's designee, in accordance with §388.107 of this chapter.

[45 FR 21217, Apr. 1, 1980, as amended at 52 FR 7825, Mar. 13, 1987]

Subpart C—Delegations

§375.301 Purpose and subdelegations.

(a) The purpose of this subpart is to set forth the authorities that the Commission has delegated to staff officials. Any action by a staff official under the authority of this subpart may be appealed to the Commission in accordance with §385.1902 of this chapter.

(b) Where the Commission, in delegating functions to specified Commission officials, permits an official to further delegate those functions to a designee of such official, *designee* shall mean the deputy of such official, the head of a division, or a comparable official as designated by the official to whom the direct delegation is made.

(c) For purposes of Subpart C, *uncontested* and *in uncontested cases* mean that no motion to intervene, or notice of intervention, in opposition to the pending matter made under §385.214 (intervention) has been received by the Commission.

[Order 112, 45 FR 79025, Nov. 28, 1980, as amended by Order 225, 47 FR 19058, May 3, 1982; Order 492, 53 FR 16062, May 5, 1988]

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§ 375.302 Delegations to the Secretary.

The Commission authorizes the Secretary, or the Secretary's designee to:

(a) Sign official general correspondence on behalf of the Commission, except as otherwise provided in this section.

(b) Prescribe, for good cause, a different time than that required by the Commission's Rules of Practice and Procedure or Commission order for filing by public utilities, licensees, natural gas companies, and other persons of answers to complaints, petitions, motions, and other documents.

(c) Schedule hearings and issue notices thereof.

(d) Accept for filing notices of intervention and petitions to intervene by commissions and agencies of the States and the Federal government.

(e) Pass upon motions to intervene before a presiding administrative law judge is designated. If a presiding administrative law judge has been designated, the provisions of §385.504(b)(12) of this chapter are controlling.

(f) Deny motions for extensions of time (other than motions made while a proceeding is pending before a presiding officer as defined in §385.102(e)), except that such motions may be granted in accordance with §385.2008 of this chapter.

(g) Reject any documents filed later than the time prescribed by an order or rule of the Commission, except that such documents may be accepted in accordance with §385.2008 of this chapter.

(h) Reject any documents filed that do not meet the requirements of the Commission's rules which govern matters of form, except that such documents may be accepted in accordance with §385.2001 of this chapter for good cause shown.

(i) Waive requirements of the Commission's rules which govern matters of form, when consistent with the public interest in a particular case.

(j) Pass upon, in contested proceedings, questions of extending time for electric public utilities, licensees, natural gas companies, and other persons to file required reports, data, and

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information and to do other acts required to be done at or within a specific time by any rule, regulation, license, permit, certificate, or order of the Commission.

(k) Accept service of process on behalf of the Commission.

(l) Accept for filing bonds or agreements and undertakings submitted in rate suspension proceedings.

(m) Issue notices or orders instituting procedures to be followed concerning contested audit issues under part 41 or 158 of this chapter either when the utility:

(1) Initially notifies the Commission that it requests disposition of a contested issue pursuant to § 41.7 or 158.7 of this chapter; or

(2) Requests disposition of a contested issue pursuant to the shortened procedures provided in § 41.3 or 158.3 of this chapter.

(n) Publish notice of land withdrawals under section 24 of the Federal Power Act.

(o) Issue notices of applications filed under the Federal Power Act and the Natural Gas Act, fixing the time for filing comments, protests or petitions to intervene and schedule hearings on such applications when appropriate or required by law.

(p) Accept for filing amendments to agreements and contracts or rate schedules submitted in compliance with Commission orders accepting offers of rate settlements if such filings are in satisfactory compliance with such orders.

(q) Grant authorizations, pursuant to the provisions of § 35.1(a) of this chapter for a designated representative to post and file rate schedules of public utilities which are parties to the same rate schedule.

(r) Redesignate proceedings, licenses, certificates, rate schedules, and other authorizations and filing to reflect changes in the names of persons and municipalities subject to or invoking Commission jurisdiction under the Federal Power Act or the Natural Gas Act, where no substantive changes in ownership, corporate structure or domicile, or jurisdictional operation are involved.

(s) Change the appropriate hydro-electric project license article upon ap-

plication by the licensee to reflect the specified reasonable rate of return as provided in § 2.15 of this chapter.

(t) Reject without prejudice all requests for rehearing and requests for modification of a proposed order issued in a proceeding under section 210 or section 211 of the Federal Power Act, 16 U.S.C. 824i, 824j.

(u) Reject without prejudice all motions for clarification that are combined with requests for rehearing and/or requests for modification of a proposed order issued in a proceeding under section 210 or section 211 of the Federal Power Act, 16 U.S.C. 824i, 824j.

(v) Toll the time for action on requests for rehearing.

(w) Issue notices in compliance with section 206(b) of the Federal Power Act.

(x) Issue instructions for electronic registration pursuant to, grant applications for waivers of the requirements of, and make determinations regarding exemptions from 18 CFR part 390.

(y) Direct the staff of the Dispute Resolution Service (DRS) to contact the parties in a complaint proceeding and establish a date by which DRS must report to the Commission whether a dispute resolution process to address the complaint will be pursued by the parties.

(z) Issue instructions pertaining to allowable electronic file and document formats, the filing of complex documents, whether paper copies are required, and procedural guidelines for submissions via the Internet, on electronic media or via other electronic means.

(aa) Issue a notice that the Commission will not further review on its own motion a Notice of Penalty filed under Section 215(e) of the Federal Power Act.

[43 FR 36435, Aug. 17, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 375.302, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 375.303 Delegations to the Director of the Office of Electric Reliability.

The Commission authorizes the Director or the Director's designee to:

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(i) May require an environmental report or other additional environmental information, and

(ii) Will prepare an environmental assessment or an environmental impact statement.

(2) Such circumstances may exist when the action may have an effect on one of the following:

(i) Indian lands;

(ii) Wilderness areas;

(iii) Wild and scenic rivers;

(iv) Wetlands;

(v) Units of the National Park System, National Refuges, or National Fish Hatcheries;

(vi) Anadromous fish or endangered species; or

(vii) Where the environmental effects are uncertain.

However, the existence of one or more of the above will not automatically require the submission of an environmental report or the preparation of an environmental assessment or an environmental impact statement.

[Order 486, 52 FR 47910, Dec. 17, 1987, as amended at 53 FR 8177, Mar. 14, 1988; Order 486-B, 53 FR 26437, July 13, 1988; 54 FR 48740, Nov. 27, 1989; Order 603, 64 FR 26611, May 14, 1999; Order 609, 64 FR 57392, Oct. 25, 1999; Order 756, 77 FR 4895, Feb. 1, 2012; Order 800, 79 FR 59112, Oct. 1, 2014]

§ 380.5 Actions that require an environmental assessment.

(a) An environmental assessment will normally be prepared first for the actions identified in this section. Depending on the outcome of the environmental assessment, the Commission may or may not prepare an environmental impact statement. However, depending on the location or scope of the proposed action, or the resources affected, the Commission may in specific circumstances proceed directly to prepare an environmental impact statement.

(b) The projects subject to an environmental assessment are as follows:

(1) Except as identified in §§ 380.4, 380.6 and 2.55 of this chapter, authorization for the site of new gas import/export facilities under DOE Delegation No. 0204-112 and authorization under section 7 of the Natural Gas Act for the construction, replacement, or abandonment of compression, processing, or

interconnecting facilities, onshore and offshore pipelines, metering facilities, LNG peak-shaving facilities, or other facilities necessary for the sale, exchange, storage, or transportation of natural gas;

(2) Prior notice filings under § 157.208 of this chapter for the rearrangement of any facility specified in §§ 157.202 (b)(3) and (6) of this chapter or the acquisition, construction, or operation of any eligible facility as specified in §§ 157.202 (b)(2) and (3) of this chapter;

(3) Abandonment or reduction of natural gas service under section 7 of the Natural Gas Act unless excluded under § 380.4 (a)(21), (28) or (29);

(4) Except as identified in § 380.6, conversion of existing depleted oil or natural gas fields to underground storage fields under section 7 of the Natural Gas Act.

(5) New natural gas curtailment plans, or any amendment to an existing curtailment plan under section 4 of the Natural Gas Act and sections 401 through 404 of the Natural Gas Policy Act of 1978 that has a major effect on an entire pipeline system;

(6) Licenses under Part I of the Federal Power Act and part 4 of this chapter for construction of any water power project—existing dam;

(7) Exemptions under section 405 of the Public Utility Regulatory Policies Act of 1978, as amended, and §§ 4.30(b)(31) and 4.101-4.108 of this chapter for small hydroelectric power projects of 10 MW or less;

(8) Licenses for additional project works at licensed projects under Part I of the Federal Power Act whether or not these are styled license amendments or original licenses;

(9) Licenses under Part I of the Federal Power Act and part 4 of this chapter for transmission lines only;

(10) Applications for new licenses under section 15 of the Federal Power Act;

(11) Approval of electric interconnections and wheeling under section 202(b), 210, 211, and 212 of the Federal Power Act, unless excluded under § 380.4(a)(17);

(12) Regulations or proposals for legislation not included under § 380.4(a)(2);

(13) Surrender of water power licenses and exemptions where project

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(d) *Failure to take exceptions results in waiver*—(1) *Complete waiver*. If a participant does not file a brief on exceptions within the time permitted under this section, any objection to the initial decision by the participant is waived.

(2) *Partial waiver*. If a participant does not object to a part of an initial decision in a brief on exceptions, any objections by the participant to that part of the initial decision are waived.

(3) *Effect of waiver*. Unless otherwise ordered by the Commission for good cause shown, a participant who has waived objections under paragraph (d)(1) or (d)(2) of this section to all or part of an initial decision may not raise such objections before the Commission in oral argument or on rehearing.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 375, 49 FR 21316, May 21, 1984; Order 575, 60 FR 4860, Jan. 25, 1995]

§ 385.712 Commission review of initial decisions in the absence of exceptions (Rule 712).

(a) *General rule*. If no briefs on exceptions to an initial decision are filed within the time established by rule or order under Rule 711, the Commission may, within 10 days after the expiration of such time, issue an order staying the effectiveness of the decision pending Commission review.

(b) *Briefs and argument*. When the Commission reviews a decision under this section, the Commission may require that participants file briefs or present oral arguments on any issue.

(c) *Effect of review*. After completing review under this section, the Commission will issue a decision which is final for purposes of rehearing under Rule 713.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 375, 49 FR 21316, May 21, 1984; Order 575, 60 FR 4860, Jan. 25, 1995]

§ 385.713 Request for rehearing (Rule 713).

(a) *Applicability*. (1) This section applies to any request for rehearing of a final Commission decision or other final order, if rehearing is provided for by statute, rule, or order.

(2) For the purposes of rehearing under this section, a final decision in any proceeding set for hearing under

subpart E of this part includes any Commission decision:

(i) On exceptions taken by participants to an initial decision;

(ii) When the Commission presides at the reception of the evidence;

(iii) If the initial decision procedure has been waived by consent of the participants in accordance with Rule 710;

(iv) On review of an initial decision without exceptions under Rule 712; and

(v) On any other action designated as a final decision by the Commission for purposes of rehearing.

(3) For the purposes of rehearing under this section, any initial decision under Rule 709 is a final Commission decision after the time provided for Commission review under Rule 712, if there are no exceptions filed to the decision and no review of the decision is initiated under Rule 712.

(b) *Time for filing; who may file*. A request for rehearing by a party must be filed not later than 30 days after issuance of any final decision or other final order in a proceeding.

(c) *Content of request*. Any request for rehearing must:

(1) State concisely the alleged error in the final decision or final order;

(2) Conform to the requirements in Rule 203(a), which are applicable to pleadings, and, in addition, include a separate section entitled “Statement of Issues,” listing each issue in a separately enumerated paragraph that includes representative Commission and court precedent on which the party is relying; any issue not so listed will be deemed waived; and

(3) Set forth the matters relied upon by the party requesting rehearing, if rehearing is sought based on matters not available for consideration by the Commission at the time of the final decision or final order.

(d) *Answers*. (1) The Commission will not permit answers to requests for rehearing.

(2) The Commission may afford parties an opportunity to file briefs or present oral argument on one or more issues presented by a request for rehearing.

(e) *Request is not a stay*. Unless otherwise ordered by the Commission, the filing of a request for rehearing does

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not stay the Commission decision or order.

(f) *Commission action on rehearing.* Unless the Commission acts upon a request for rehearing within 30 days after the request is filed, the request is denied.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 375, 49 FR 21316, May 21, 1984; Order 575, 60 FR 4860, Jan. 25, 1995; 60 FR 16567, Mar. 31, 1995; Order 663, 70 FR 55725, Sept. 23, 2005; 71 FR 14642, Mar. 23, 2006]

§ 385.714 Certified questions (Rule 714).

(a) *General rule.* During any proceeding, a presiding officer may certify or, if the Commission so directs, will certify, to the Commission for consideration and disposition any question arising in the proceeding, including any question of law, policy, or procedure.

(b) *Notice.* A presiding officer will notify the participants of the certification of any question to the Commission and of the date of any certification. Any such notification may be given orally during the hearing session or by order.

(c) *Presiding officer's memorandum; views of the participants.* (1) A presiding officer should solicit, to the extent practicable, the oral or written views of the participants on any question certified under this section.

(2) The presiding officer must prepare a memorandum which sets forth the relevant issues, discusses all the views of participants, and recommends a disposition of the issues.

(3) The presiding officer must append to any question certified under this section the written views submitted by the participants, the transcript pages containing oral views, and the memorandum of the presiding officer.

(d) *Return of certified question to presiding officer.* If the Commission does not act on any certified question within 30 days after receipt of the certification under paragraph (a) of this section, the question is deemed returned to the presiding officer for decision in accordance with the other provisions of this subpart.

(e) *Certification not suspension.* Unless otherwise directed by the Commission or the presiding officer, certification

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under this section does not suspend the proceeding.

§ 385.715 Interlocutory appeals to the Commission from rulings of presiding officers (Rule 715).

(a) *General rule.* A participant may not appeal to the Commission any ruling of a presiding officer during a proceeding, unless the presiding officer under paragraph (b) of this section, or the motions Commissioner, under paragraph (c) of this section, finds extraordinary circumstances which make prompt Commission review of the contested ruling necessary to prevent detriment to the public interest or irreparable harm to any person.

(b) *Motion to the presiding officer to permit appeal.* (1) Any participant in a proceeding may, during the proceeding, move that the presiding officer permit appeal to the Commission from a ruling of the presiding officer. The motion must be made within 15 days of the ruling of the presiding officer and must state why prompt Commission review is necessary under the standards of paragraph (a) of this section.

(2) Upon receipt of a motion to permit appeal under subparagraph (a)(1) of this section, the presiding officer will determine, according to the standards of paragraph (a) of this section, whether to permit appeal of the ruling to the Commission. The presiding officer need not consider any answer to this motion.

(3) Any motion to permit appeal to the Commission of an order issued under Rule 604, or appeal of a ruling under paragraph (a) or (b) of Rule 905, must be granted by the presiding officer.

(4) A presiding officer must issue an order, orally or in writing, containing the determination made under paragraph (b)(2) of this section, including the date of the action taken.

(5) If the presiding officer permits appeal, the presiding officer will transmit to the Commission:

(i) A memorandum which sets forth the relevant issues and an explanation of the rulings on the issues; and

(ii) the participant's motion under paragraph (b)(1) of this section and any answer permitted to the motion.

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(g) *The interpretation*—(1) Except as provided in paragraph (g)(2) of this section, the General Counsel will provide a copy of his or her written interpretation of the NGPA or rule as applied to the act, transaction, or circumstance presented upon the person who made the request for the interpretation and upon persons named in the request as direct participants in the act, transaction, or circumstance.

(2) The General Counsel may determine not to issue an interpretation, in which case the person who made the request and direct participants as specified in the request will be notified in writing of the decision not to issue an interpretation, and the reason for the decision.

(3) Only those persons to whom an interpretation is specifically addressed and other persons who are named in the request, who have been informed by the applicant for an interpretation of the pendency of the request and who are direct participants in the act, transaction or circumstance presented, may rely upon it. The effectiveness of an interpretation depends entirely on the accuracy of the facts presented to the General Counsel. If a material or relevant fact has been misrepresented or omitted or if any material or relevant fact changes after an interpretation is issued or if the action taken differs from the facts presented in the request, the interpretation may not be relied upon by any person.

(4) An interpretation may be rescinded or modified prospectively at any time. A rescission or modification is effected by notifying persons entitled to rely on the interpretation at the address contained in the original request.

(5) Any interpretation based on the NGPA or a rule issued thereunder in effect at the time of issuance may be relied upon only to the extent such law or rule remains in effect.

(6) Except as provided in paragraphs (g)(3), (g)(4) and (g)(5) of this section, the Staff will not recommend any action to the Commission which is inconsistent with the position espoused in the interpretation. The interpretation of the General Counsel is not the interpretation of the Commission. An interpretation provided by the General

Counsel is given without prejudice to the Commission's authority to consider the same or like question and to issue a declaratory order to take other action which has the effect of rescinding, revoking, or modifying the interpretation of the General Counsel.

(h) *Appeal*. There is no appeal to the Commission of an interpretation.

(i) *Interpretative rules*. Upon the petition of any person or upon its own motion, the Commission may publish in the FEDERAL REGISTER an interpretative rule regarding any question arising under the NGPA or a rule promulgated thereunder. Any person is entitled to rely upon an interpretative rule.

(j) *Applications for adjustments treated as requests for interpretations*. Except for the notification provisions of paragraph (d)(5) of this section, the provisions of this section apply to any petition for an adjustment which is deemed a request for an interpretation under Rule 1117. Notice to all parties to an adjustment proceeding under subpart K of this part that is deemed to be a request for an interpretation will be given under Rule 1117(d)(1).

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 394, 49 FR 35366, Sept. 7, 1984; Order 737, 75 FR 43405, July 26, 2010]

§ 385.1902 Appeals from action of staff (Rule 1902).

(a) Any staff action (other than a decision or ruling of presiding officer, as defined in Rule 102(e)(1), made in a proceeding set for hearing under subpart E of this part) taken pursuant to authority delegated to the staff by the Commission is a final agency action that is subject to a request for rehearing under Rule 713 (request for rehearing).

(b) All appeals of staff action that were timely filed prior to December 3, 1990 and that had not been acted upon by the Commission on their substantive merits are deemed to be timely filed requests for rehearing of final agency action. All notices issued by the Commission prior to December 3, 1990 stating the Commission's intent to act on appeals of staff action such that they are not deemed denied by the expiration of a 30-day period after the filing of the appeal, are deemed to be orders granting rehearing of final agency

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§ 1501.2 Apply NEPA early in the process.

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

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

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

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

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

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

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

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

§ 1501.3 When to prepare an environmental assessment.

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

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

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

§ 1501.4 Whether to prepare an environmental impact statement.

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

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

(1) Normally requires an environmental impact statement, or

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

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

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

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

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

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

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

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

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

§ 1501.5 Lead agencies.

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

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

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

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

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

(1) Magnitude of agency's involvement.

(2) Project approval/disapproval authority.

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

(4) Duration of agency's involvement.

(5) Sequence of agency's involvement.

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

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

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

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

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

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

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

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

§ 1501.6 Cooperating agencies.

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

(a) The lead agency shall:

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

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

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

(b) Each cooperating agency shall:

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

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consequencies together, such as common timing or geography. An agency may wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.

(b) Alternatives, which include:

(1) No action alternative.

(2) Other reasonable courses of actions.

(3) Mitigation measures (not in the proposed action).

(c) Impacts, which may be: (1) Direct; (2) indirect; (3) cumulative.

§ 1508.26 Special expertise.

Special expertise means statutory responsibility, agency mission, or related program experience.

§ 1508.27 Significantly.

Significantly as used in NEPA requires considerations of both context and intensity:

(a) *Context*. This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

(b) *Intensity*. This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:

(1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.

(2) The degree to which the proposed action affects public health or safety.

(3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and

scenic rivers, or ecologically critical areas.

(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

(5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

(6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

(7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

(8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

(9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

(10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

[43 FR 56003, Nov. 29, 1978; 44 FR 874, Jan. 3, 1979]

§ 1508.28 Tiering.

Tiering refers to the coverage of general matters in broader environmental impact statements (such as national program or policy statements) with subsequent narrower statements or environmental analyses (such as regional or basinwide program statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement

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§ 192.161 Supports and anchors.

(a) Each pipeline and its associated equipment must have enough anchors or supports to:

- (1) Prevent undue strain on connected equipment;
- (2) Resist longitudinal forces caused by a bend or offset in the pipe; and
- (3) Prevent or damp out excessive vibration.

(b) Each exposed pipeline must have enough supports or anchors to protect the exposed pipe joints from the maximum end force caused by internal pressure and any additional forces caused by temperature expansion or contraction or by the weight of the pipe and its contents.

(c) Each support or anchor on an exposed pipeline must be made of durable, noncombustible material and must be designed and installed as follows:

(1) Free expansion and contraction of the pipeline between supports or anchors may not be restricted.

(2) Provision must be made for the service conditions involved.

(3) Movement of the pipeline may not cause disengagement of the support equipment.

(d) Each support on an exposed pipeline operated at a stress level of 50 percent or more of SMYS must comply with the following:

(1) A structural support may not be welded directly to the pipe.

(2) The support must be provided by a member that completely encircles the pipe.

(3) If an encircling member is welded to a pipe, the weld must be continuous and cover the entire circumference.

(e) Each underground pipeline that is connected to a relatively unyielding line or other fixed object must have enough flexibility to provide for possible movement, or it must have an anchor that will limit the movement of the pipeline.

(f) Except for offshore pipelines, each underground pipeline that is being connected to new branches must have a firm foundation for both the header and the branch to prevent detrimental lateral and vertical movement.

[35 FR 13257, Aug. 19, 1970, as amended by Amdt. 192-58, 53 FR 1635, Jan. 21, 1988]

§ 192.163 Compressor stations: Design and construction.

(a) *Location of compressor building.* Except for a compressor building on a platform located offshore or in inland navigable waters, each main compressor building of a compressor station must be located on property under the control of the operator. It must be far enough away from adjacent property, not under control of the operator, to minimize the possibility of fire being communicated to the compressor building from structures on adjacent property. There must be enough open space around the main compressor building to allow the free movement of fire-fighting equipment.

(b) *Building construction.* Each building on a compressor station site must be made of noncombustible materials if it contains either—

(1) Pipe more than 2 inches (51 millimeters) in diameter that is carrying gas under pressure; or

(2) Gas handling equipment other than gas utilization equipment used for domestic purposes.

(c) *Exits.* Each operating floor of a main compressor building must have at least two separated and unobstructed exits located so as to provide a convenient possibility of escape and an unobstructed passage to a place of safety. Each door latch on an exit must be of a type which can be readily opened from the inside without a key. Each swinging door located in an exterior wall must be mounted to swing outward.

(d) *Fenced areas.* Each fence around a compressor station must have at least two gates located so as to provide a convenient opportunity for escape to a place of safety, or have other facilities affording a similarly convenient exit from the area. Each gate located within 200 feet (61 meters) of any compressor plant building must open outward and, when occupied, must be openable from the inside without a key.

(e) *Electrical facilities.* Electrical equipment and wiring installed in compressor stations must conform to the

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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 29th day of May 2018, served the foregoing upon the counsel listed in the Service Preference Report via email through the Court's CM/ECF system.

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