ORAL ARGUMENT NOT YET SCHEDULED

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

Nos. 23-1069 & 23-1071
(consolidated)

HEALTHY GULF, *et al.*,
Petitioners,
v.
FEDERAL ENERGY REGULATORY COMMISSION,
Respondent.

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

BRIEF FOR RESPONDENT FEDERAL ENERGY REGULATORY COMMISSION

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FINAL BRIEF: OCTOBER 27, 2023

CIRCUIT RULE 28(a)(1) CERTIFICATE

A. Parties and Amici

The parties before this Court are identified in Petitioners' Rule 28(a)(1) certificate.

B. Rulings Under Review

1. *Commonwealth LNG, LLC*, Order Granting Authorization under Section 3 of the Natural Gas Act, 181 FERC ¶ 61,143 (Nov. 17, 2022), R. 526, JA 1-89 ("Authorization Order");

   and

2. *Commonwealth LNG, LLC*, Order Addressing Arguments Raised on Rehearing, 183 FERC ¶ 61,173 (June 9, 2023), R. 549, JA 90-152 ("Rehearing Order").

C. Related Cases

This case has not previously been before this Court or any other court. As identified in Petitioners' Rule 28(a)(1) certificate, *Alabama Municipal Distributors Group v. FERC*, D.C. Cir. Nos. 22-1101, *et al.*, presents similar issues and also involves the Commission's authorization of infrastructure related to a liquefied natural gas export terminal.

/s/ Susanna Y. Chu
Susanna Y. Chu

October 27, 2023

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GLOSSARY

Authorization Order	*Commonwealth LNG, LLC*, 181 FERC ¶ 61,143 (Nov. 17, 2022), R. 526, JA 1-89
Br.	Opening brief of Environmental Petitioners
Center for Biological Diversity	Petitioner Center for Biological Diversity
CO2e	Carbon dioxide equivalent
Commission or FERC	Respondent Federal Energy Regulatory Commission
Commonwealth	Intervenor Commonwealth LNG, LLC
Environmental Impact Statement	FERC Office of Energy Projects, Final Environmental Impact Statement (Sept. 2022), R. 515, JA 253-454
Environmental Petitioners	Petitioners Healthy Gulf, Center for Biological Diversity, Louisiana Bucket Brigade, Sierra Club, Turtle Island Restoration Network, and Natural Resources Defense Council
JA	Joint Appendix

NAAQS	National Ambient Air Quality Standards
NEPA	National Environmental Policy Act
P	Internal paragraph number in a FERC order
Rehearing Order	*Commonwealth LNG, LLC*,183 FERC ¶ 61,173 (June 9, 2023), R. 549, JA 90-152
Sierra Club	Petitioner Sierra Club
SJA	Supplemental Joint Appendix

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FEDERAL ENERGY REGULATORY COMMISSION

BRIEF FOR RESPONDENT
FEDERAL ENERGY REGULATORY COMMISSION

INTRODUCTION

The petitions for review challenge orders of the Federal Energy Regulatory Commission ("FERC" or the "Commission") granting the application of Intervenor Commonwealth LNG, LLC ("Commonwealth") to site, construct, and operate a natural gas liquefaction and export facility in Cameron Parish, Louisiana (the "Project") under section 3 of the Natural Gas Act, 15 U.S.C. § 717b. *Commonwealth LNG, LLC*, 181 FERC ¶ 61,143 (Nov. 17, 2022), R. 526, JA 1-89 ("Authorization Order"),

on reh'g, 183 FERC ¶ 61,173 (June 9, 2023), R. 549, JA 90-152 ("Rehearing Order").

The Project is designed to liquefy and export domestically produced natural gas to foreign markets. Regulatory responsibility for natural gas exports is divided between the Department of Energy, which authorizes the export of the commodity itself, and the Commission, which authorizes construction and operation of all terminal facilities. Under Natural Gas Act section 3, the Commission is required to grant applications to construct liquefied natural gas export facilities unless it determines that a proposed project "will not be consistent with the public interest." 15 U.S.C. § 717b(a). Accordingly, the Commission here reviewed Commonwealth's application to determine whether the siting, construction, and operation of the Project would be inconsistent with the public interest under Natural Gas Act section 3.

The Commission also engaged in an extensive environmental review of the Project, including the preparation of an Environmental Impact Statement, consistent with the National Environmental Policy Act, 42 U.S.C. §§ 4321, *et seq*. (NEPA). Based on a comprehensive

environmental analysis, the Commission concluded that, if implemented subject to the Commission's conditions, the Project represented an environmentally acceptable action and was not inconsistent with the public interest. Accordingly, the Commission issued the Authorization Order and, subsequently, the Rehearing Order addressing arguments raised on rehearing before the agency.

STATEMENT OF THE ISSUE

Petitioners Healthy Gulf, Center for Biological Diversity, Louisiana Bucket Brigade, Sierra Club, Turtle Island Restoration Network, and Natural Resources Defense Council (collectively, "Environmental Petitioners") raise the following issue:

Did the Commission reasonably analyze environmental issues (terminal design alternatives, greenhouse gas emissions, and air quality impacts on environmental justice communities), consistent with the requirements of Natural Gas Act section 3 and NEPA?

STATUTORY AND REGULATORY PROVISIONS

Pertinent statutes and regulations are reproduced in the Addendum.

STATEMENT OF THE CASE

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." *NAACP v. FPC*, 425 U.S. 662, 669-70 (1976). The Act declares that "the business of transporting and selling natural gas for ultimate distribution to the public" and in "foreign commerce" is affected with the public interest. 15 U.S.C. § 717(a).

Section 3 of the Natural Gas Act, 15 U.S.C. § 717b, prohibits the export of any natural gas from the United States to a foreign country without "first having secured an order of the Commission authorizing" such exportation. *Id.* § 717b(a). In 1977, Congress transferred the regulatory functions of Natural Gas Act section 3 to the Department of Energy. *See* 42 U.S.C. § 7151(b). The Department of Energy subsequently delegated back to the Commission limited authority under Natural Gas Act section 3(e), 15 U.S.C. § 717b(e), to authorize the siting, construction, expansion, and operation of liquefied natural gas terminals, while retaining for itself exclusive authority over the actual

export of natural gas. *Id.* § 717b(a). *See* DOE Delegation Order No. 00-044.00A (effective May 16, 2006) (renewing delegation to the Commission of authority over the construction and operation of liquefied natural gas facilities); *see also* 42 U.S.C. § 7172(e). Thus, under Natural Gas Act section 3, the Commission's statutory authority extends only to a review of the technical and environmental aspects of proposed import or export terminal facilities. *See* 15 U.S.C. § 717b(e); *see, e.g., EarthReports, Inc. v. FERC*, 828 F.3d 949, 952 (D.C. Cir. 2016) (describing how regulatory oversight for the export of liquefied natural gas and supporting facilities is divided between the Commission and the Department of Energy).

Natural Gas Act section 3 requires the Commission to approve an application for natural gas export facilities "unless . . . it finds that the proposed exportation or importation will not be consistent with the public interest." 15 U.S.C. 717b(a). Thus, section 3 "sets out a general presumption favoring . . . authorization." *Ctr. for Biological Diversity v. FERC*, 67 F.4th 1176, 1188 (D.C. Cir. 2023) (quoting *W. Va. Pub. Servs. Comm'n v. Dep't of Energy*, 681 F.2d 847, 856 (D.C. Cir. 1982)); *see also Sierra Club v. U.S. Dep't of Energy*, 867 F.3d 189, 203 (D.C. Cir. 2017)

("[T]here must be 'an affirmative showing of inconsistency with the public interest' to deny [a section 3] application.") (quoting *Panhandle Producers & Royalty Owners Ass'n v. Econ. Regul. Admin.*, 822 F.2d 1105, 1111 (D.C. Cir. 1987)).

In this respect, Natural Gas Act section 3 "differs significantly" from Natural Gas Act section 7, 15 U.S.C. § 717f, which "condition[s] agency approval upon a positive finding that the proposed activity will be in the public interest." *W. Va. Pub. Servs. Comm'n*, 681 F.2d at 856; *see also Panhandle Producers*, 822 F.2d at 1111 (contrasting Natural Gas Act section 3, 15 U.S.C. § 717b, which "requires an affirmative showing of inconsistency with the public interest to *deny* an application," with section 7, *id.* § 717f, which "requires an affirmative showing of public convenience and necessity to *grant* one") (emphases in original)).

B. The National Environmental Policy Act

NEPA establishes procedures that federal agencies must follow to ensure that the environmental impacts of a proposed federal action are "adequately identified and evaluated." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989). "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." *Dep't of Transp. v. Public Citizen*, 541 U.S. 752, 756-57 (2004). 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).

NEPA's implementing regulations require agencies to consider the environmental effects of a proposed action by preparing either an environmental assessment—if accompanied by a finding of no significant impact—or an environmental impact statement. *See* 40 C.F.R. § 1501.3(a)-(b).

II. THE AGENCY PROCEEDING

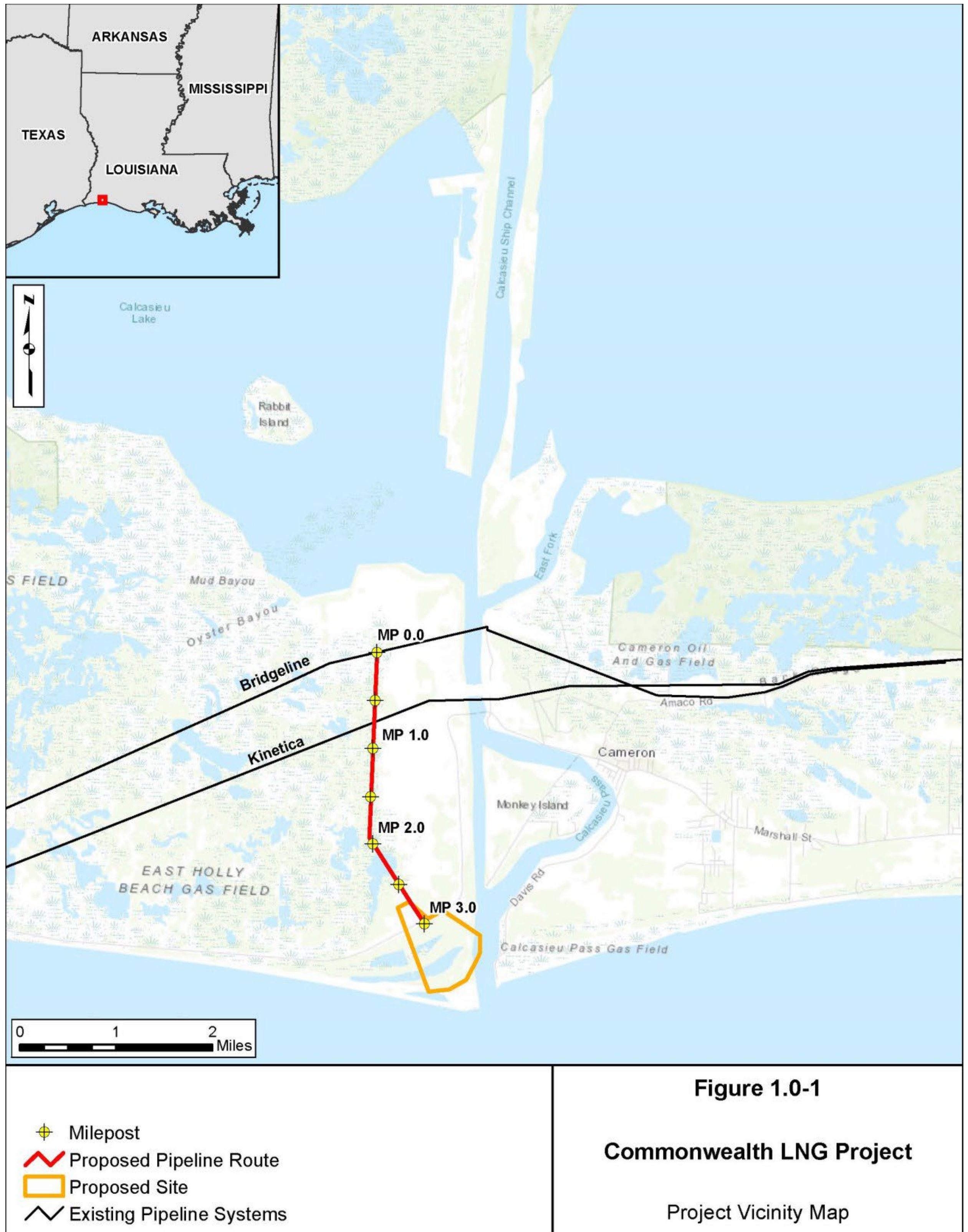
A. The Commonwealth Project

In August 2019, Commonwealth filed an application with the Commission for authorization under Natural Gas Act section 3 to site, construct, and operate new natural gas liquefaction and export facilities

in southwestern Louisiana.[1] Authorization Order P 1, JA 1. The Project would be located on the west side of the Calcasieu Ship Channel, near the entrance to the Gulf of Mexico, on approximately 153 acres of land. *Id.* PP 1 & 14, JA 1, 7-8. The Project includes six liquefaction trains, six liquefied natural gas storage tanks, one marine loading berth, a three-mile pipeline, and related facilities. *Id.* P 3, JA 1-2; *see also* FERC Office of Energy Projects, Final Envtl. Impact Statement at 2 (Sept. 2022) ("Environmental Impact Statement"), R. 515, JA 255.

The following map shows the location of the proposed facility:

[1] Natural gas liquefies when cooled to minus 260 degrees Fahrenheit. This permits the liquefied gas to be transported by ships or trucks with insulated tanks to locations not connected to a pipeline network. Once the liquefied natural gas reaches its destination, it is unloaded and stored until ready for distribution. *See* FERC, Energy Primer: A Handbook of Energy Market Basics 15-16 (Apr. 2020) ("Energy Primer"), *available at* https://www.ferc.gov/sites/default/files/2020-06/energy-primer-2020_Final.pdf.



Environmental Impact Statement 1-2, JA 276.

The Project is designed to liquefy and export to foreign markets domestically produced natural gas sourced from existing interstate and intrastate pipeline systems (shown in the map above) in southwestern Louisiana. Authorization Order P 5, JA 3. The liquefaction facilities are capable of processing up to 9.5 million tons per year of liquefied natural gas for export. *Id.* P 4, JA 2-3. In April 2020, the Department of Energy's Office of Fossil Energy authorized Commonwealth to export liquefied natural gas to nations with which the United States has a Free Trade Agreement for a 25-year term. *Id.* P 6 & n.5, JA 3 (citing *Commonwealth LNG, LLC*, Department of Energy / Office of Fossil Energy Dkt. No. 19-134-LNG, Order No. 4521 (Apr. 17, 2020)).[2] Commonwealth's application to export to non-Free Trade Agreement nations is pending before the Department of Energy. *Id.*

B. The Commission's Environmental Analysis

Commission staff began environmental review of the Project in August 2017, as part of the agency's pre-filing process. Authorization Order P 20, JA 10-11. That process affords an opportunity for

[2] https://www.energy.gov/fecm/articles/commonwealth-lng-llc-fe-dkt-no-19-134-lng.

interested stakeholders to become involved early in project planning, facilitates interagency cooperation, and assists in the identification and resolution of issues prior to the filing of a formal application with the Commission. *Id.*

In February 2018, the Commission issued a notice of intent to prepare an Environmental Impact Statement for the Project and invited comments. *Id.* Commission staff held a public scoping session in Johnson Bayou, Louisiana in March 2018 to receive public comments on the Project, and subsequently received over 240 comments from landowners, federal, state, and local agencies, Native American Tribes, and other interested parties. *Id.*

In October 2019, Commission staff issued an environmental review schedule for the Project. *Id.* P 21, JA 11. That same month, staff also issued the first of many environmental information requests to Commonwealth. *See* Office of Energy Projects, Envtl. Info. Request (Oct. 2, 2019), R. 125, JA 160. As environmental review proceeded, Commission staff ultimately issued 16 environmental information requests to Commonwealth—dating from October 2019 to October 2022. *See e.g.*, Office of Energy Projects, Envtl. Info. Requests, JA 160-61, 178-

200. These Environmental Information Requests directed Commonwealth to provide additional information and clarification regarding Project alternatives, environmental impacts, environmental justice communities, and proposed mitigation measures.

The Commission later revised its initial environmental review schedule pending an official interpretation from the Department of Transportation's Pipeline and Hazardous Material Safety Administration regarding Commonwealth's proposed liquefied natural gas storage tank design, and additional information from Commonwealth in response to a Commission staff information request. Authorization Order PP 22-23, JA 11. The Commission also established an additional public comment period on the proposed Project. *Id.*

Commission staff issued a draft Environmental Impact Statement in March 2022, and held public comment sessions on the draft in April 2022. *See id.* P 24, JA 11-12. The Commission received both written and verbal comments from individuals, agencies, and organizations. *Id.*

In September 2022, Commission staff issued the final Environmental Impact Statement for the Project. *Id.* P 25, JA 12; Environmental Impact Statement, JA 253-454. The three-volume, 991-

page Environmental Impact Statement addressed geology, soils, water resources, wetlands, vegetation, wildlife, aquatic resources, threatened and endangered species, land use, recreation, visual resources, socioeconomics, environmental justice, cultural resources, air quality, noise, safety, cumulative impacts, and identified alternatives. *Id.*

As relevant here, the Environmental Impact Statement addressed Project alternatives (Environmental Impact Statement 3-25 – 3-53, JA 279-307), greenhouse gas emissions and climate change (Environmental Impact Statement 4-206 – 4-207, JA 323-24, 4-394 – 4-399, JA 378-83, 5-418 – 5-419, JA 402-403), and air quality impacts on environmental justice communities in the vicinity of the Project (Environmental Impact Statement 4-191 – 4-193, JA 312-14, 4-197 – 4-199, JA 315-17, 4-387 – 4-388, SJA 520-21, 5-414 – 5-417, JA 398-401). Ultimately, the Environmental Impact Statement concluded that construction and operation of the Project would result in some adverse environmental impacts, but that most of these impacts would not be significant or would be reduced to less-than-significant levels with the

implementation of recommended avoidance, minimization, and mitigation measures. Authorization Order PP 15 & 26, JA 8-9, 12.[3]

C. The Orders on Review

1. Authorization Order

The Commission issued an order authorizing the Project in November 2022, subject to certain environmental and regulatory conditions. Authorization Order, JA 1-89. The Authorization Order describes the statutory parameters governing the Commission's public interest assessment under Natural Gas Act section 3, and its environmental review process under NEPA. *See id.* PP 10-18, JA 5-10 (discussing public interest standard under Natural Gas Act section 3); PP 19-84, JA 10-42 (discussing environmental impacts).

As relevant here, the Commission addressed arguments concerning greenhouse gas emissions and climate change. First, the Commission explained that the "reasonably foreseeable and causally connected" greenhouse gas emissions are those associated with the

[3] The Commission found that the Project would have significant visual impacts in the area. *See* Environmental Impact Statement 4-378 – 4-379, SJA 511-12, 4-388, JA 372. Environmental Petitioners do not challenge this aspect of the Commission's analysis.

Project's construction and operation. *Id.* P 74, JA 38. The Commission then estimated the greenhouse gas emissions associated with construction and operation of the Project, and contextualized those numbers by comparing them to total national and state greenhouse gas inventories and reduction targets. *See id.* PP 74-75, JA 38-39 (citing Environmental Impact Statement at 4-213 – 4-220, JA 330-37, 4-224, JA 341, 4-396 – 4-397, JA 380-81).

The Commission's NEPA analysis included a qualitative analysis of the Project's climate impacts, and acknowledged that the Project would increase the atmospheric concentration of greenhouse gas emissions, and would contribute cumulatively to climate change. Authorization Order P 75, JA 38-39 (citing Environmental Impact Statement at 4-395, JA 379). The Commission also explained that the Environmental Impact Statement contains staff estimates of the social cost of greenhouse gas emissions associated with the Project's construction and operation. Authorization Order P 75, JA 38-39 (citing Environmental Impact Statement at 4-397 – 4-398, JA 381-82). However, the Commission determined that it was not able to formally characterize these emissions as significant or not significant for

purposes of evaluating potential climate change impacts. Authorization Order PP 75-76, JA 38-40.

The Commission also addressed air quality impacts on environmental justice communities in the vicinity of the Project. *Id.* P 63, JA 32-33. The Environmental Impact Statement describes the modeling performed to assess air quality impacts and compliance with the Environmental Protection Agency's National Ambient Air Quality Standards ("NAAQS"). *Id.*; Environmental Impact Statement at 4-198, JA 316, 4-225 – 4-232, JA 342-49). On the basis of this record, the Commission concluded that the Project "would not cause or significantly contribute to a potential exceedance of the NAAQS and would not result in significant impacts on air quality in the region." Authorization Order P 63, JA 32-33; Environmental Impact Statement at 4-198, JA 316. Thus, environmental justice communities in the vicinity of the Project would experience cumulative impacts on air quality, but such impacts would be less than significant. Authorization Order P 63, JA 32-33; Environmental Impact Statement at 4-387 – 4-388, SJA 520-21.

On the record before it, the Commission agreed with the Environmental Impact Statement's conclusion that the Project, if

implemented subject to the conditions attached to the Authorization Order, constitutes an "environmentally acceptable action." *Id.* P 84, JA 42. The Commission granted Commonwealth's application, finding that the Project is not inconsistent with the public interest, consistent with Natural Gas Act section 3. *Id.* P 85, JA 43. Then-Chairman Glick, Commissioner Phillips, Commissioner Clements, and Commissioner Danly filed concurring statements. JA 72-89.

Environmental Petitioners jointly requested agency rehearing of the Authorization Order, and subsequently filed these petitions for review, prior to the Commission's issuance of an order addressing the merits of Environmental Petitioners' arguments on rehearing. *See* Rehearing Order, JA 90-152; Request for Reh'g (Dec. 19, 2022), R. 533, JA 455-500.

2. <u>Rehearing Order</u>

As relevant here, the Rehearing Order addressed Environmental Petitioners' arguments concerning terminal design alternatives, including combined-cycle electric generation as an alternative to simple-cycle power generation, elimination of one of six liquefied natural gas storage tanks, and carbon capture and sequestration facilities.

Rehearing Order PP 20-31, JA 100-106. The Rehearing Order also affirmed the Authorization Order with respect to the analysis of greenhouse gas emissions resulting from construction and operation of the Project (*id*. PP 39-41, JA 112-14), and air quality impacts on environmental justice communities (*id*. PP 46-57, JA 118-25). Commissioner Danly filed a concurring statement, JA 146-47; Commissioner Clements filed a dissenting regarding the consideration of climate impacts under Natural Gas Act section 3. Clements Rehearing Dissent, JA 148-52.

SUMMARY OF ARGUMENT

Environmental Petitioners challenge only certain aspects of the Commission's comprehensive environmental review of the proposed Commonwealth liquefied natural gas export terminal. The orders on review, Environmental Impact Statement, and agency record (including 16 environmental information requests issued by Commission staff to Commonwealth, and Commonwealth's responses, over the course of three years) reflect the Commission's careful, thoughtful environmental review of the Project.

Environmental Petitioners here—including Center for Biological Diversity and Sierra Club—ask the Court to flyspeck the Commission's analysis, contrary to *Center for Biological Diversity and Sierra Club v. FERC*, 67 F.4th 1176 (D.C. Cir. 2023). Seeking to avoid the import of that decision, Environmental Petitioners' brief cite it in passing only twice. Here, as in *Center for Biological Diversity*, similarly dealing with a challenge to a Commission-approved liquefied natural gas terminal, the orders on review are "lawful and reasonable," and consistent with the Commission's statutory responsibilities under the Natural Gas Act and NEPA.

First, as discussed in Argument section II, the Commission gave appropriate consideration to the public interest in authorizing the Project under Natural Gas Act section 3. Under that provision, the Commission "shall issue" an authorization for a proposed liquefied natural gas facility "'unless' it determines doing so 'will not be consistent with the public interest.'" *Ctr. for Biological Diversity*, 67 F.4th at 1188 (quoting 15 U.S.C. § 717b(a)). As in *Center for Biological Diversity,* the Commission's extensive environmental analysis here satisfied NEPA and provided a reasonable basis for its determination

that the Project satisfies the public interest standard under Natural Gas Act section 3. *See* 15 U.S.C. § 717b(a). No more was required. *See Ctr. for Biological Diversity*, 67 F.4th at 1188 (Commission's authorization of liquefied natural gas facility "easily comports" with Natural Gas Act section 3's undemanding "not inconsistent" standard).

Second, as discussed in Argument section III, the Commission considered numerous terminal configuration alternatives, consistent with its NEPA obligations. Based on the Environmental Impact Statement and agency record, the Commission reasonably rejected, with ample explanation, alternative configurations involving (1) elimination of one of six liquefied natural gas storage tanks; (2) replacement of the proposed simple-cycle power plant with a combined-cycle power plant for on-site power generation; and (3) carbon capture and sequestration facilities.

Third, as discussed in Argument section IV, the Commission appropriately considered the Project's greenhouse gas emissions. In particular, the orders on review and Environmental Impact Statement for the Project quantified greenhouse gas emissions associated with construction and operation of the Project, compared them to national

and state emissions levels and reduction targets, and included a qualitative analysis of climate change and the Project's potential climate impacts. The Commission additionally disclosed, for informational purposes, staff estimates of the social cost of carbon value of Project emissions. Environmental Petitioners contend that the Commission was compelled to take the additional step of formally characterizing the "significance" of these greenhouse gas emissions. There is no support for this contention, which is contrary to multiple decisions of this Court, including *Center for Biological Diversity*, 67 F.4th at 1184.

Finally, as discussed in Argument section V, the Commission appropriately considered air quality impacts on environmental justice communities, relying on an Environmental Protection Agency standard that the Court has upheld as an appropriate metric in the Commission's NEPA analyses.

ARGUMENT

I. STANDARD OF REVIEW

This Court reviews Commission actions under the Administrative Procedure Act's narrow "arbitrary and capricious" standard. 5 U.S.C.

§ 706(2)(A). Under that standard, the question is not "whether a regulatory decision is the best one possible or even whether it is better than the alternatives." *FERC v. Elec. Power Supply Ass'n*, 577 U.S. 260, 292 (2016). Rather, the reviewing 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 FCC v. Prometheus Radio Project*, 141 S. Ct. 1150, 1158 (2021) ("deferential" arbitrary-and-capricious standard requires only that agency action "be reasonable and reasonably explained").

The grant or denial of an authorization under section 3 of the Natural Gas Act, 15 U.S.C. § 717b, is within the Commission's discretion, and the Court does not substitute its judgment for that of the agency. *See Pub. Serv. Comm'n v. FERC*, 777 F.2d 31, 35 (D.C. Cir. 1985) (Commission's discretion under Natural Gas Act section 3 is "elastic," i.e., "even more flexible than the discretion afforded to the [Commission] under [Natural Gas Act] section 7.").

NEPA is a "purely procedural statute" that "requires agencies to evaluate the environmental effects of their actions, but the preparation of an environmental impact statement will never force an agency to change the course of action it proposes." *Ctr. for Biological Diversity*, 67 F.4th at 1181 (cleaned up). The Commission's environmental analysis is subject to a "rule of reason" standard, and the Court has "consistently decline[d] to 'flyspeck'" that analysis. *Ctr. for Biological Diversity*, 67 F.4th at 1182 (quoting *Minisink Residents for Envtl. Pres. & Safety v. FERC*, 762 F.3d 97, 112 (D.C. Cir. 2014)); *see also City of Boston Delegation v. FERC*, 897 F.3d 241, 251 (D.C. Cir. 2018) (same).

In this context, "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. Co. v. Nat. Res. Def. Council, Inc.*, 462 U.S. 87, 97-98 (1983)).

II. THE COMMISSION APPROPRIATELY CONSIDERED THE PUBLIC INTEREST CONSISTENT WITH NATURAL GAS ACT SECTION 3

Environmental Petitioners challenge the Commission's finding that the Project is "not inconsistent" with the public interest on two grounds. Br. 67-71. First, Environmental Petitioners contend that the Commission failed to take a "hard look" at environmental impacts and potential mitigation, and thus erred in authorizing the Project as not inconsistent with the public interest under Natural Gas Act section 3. *Id*. at 68. Second, Environmental Petitioners contend that the Commission failed to reasonably explain its public interest finding. *Id.*

Environmental Petitioners err in arguing that the Commission was obligated to specify the "public interest benefits" flowing from the Project. Br. 70. Here, by the time the Commission was considering Commonwealth's application, the Department of Energy had already authorized exports from the Project to Free Trade Agreement countries. See Authorization Order P 6 & n.5, JA 3. Further, Natural Gas Act section 3 does not require the Commission to identify public benefits flowing from a proposed project—the statute presumes such benefits. *See* 15 U.S.C. § 717b(c) ("[E]xportation of natural gas to a nation with

which there is in effect a free trade agreement . . . shall be deemed to be consistent with the public interest."); *see also Ctr. for Biological Diversity*, 67 F.4th at 1188; Authorization Order P 14 & n.30, JA 7-8 (citing *EarthReports*, 828 F.3d at 953; *Sierra Club*, 867 F.3d at 203). Contrary to Natural Gas Act section 7, 15 U.S.C. § 717f, which "requires an affirmative showing of public convenience and necessity" to grant a certificate of public convenience and necessity, Natural Gas Act section 3, *id.* § 717b, "requires an affirmative showing of inconsistency with the public interest" to deny a section 3 authorization application. *See Panhandle Producers*, 822 F.2d at 1111; *W. Va. Pub. Servs. Comm'n*, 681 F.2d at 856.

Consistent with its NEPA responsibilities, the Commission took a "hard look" at environmental impacts related to the siting, construction, and operation of the proposed terminal. As discussed below, the Commission engaged in an extensive environmental review process, encompassing—among other things—numerous public outreach and public comment opportunities, issuance of 16 sets of environmental information requests to Commonwealth (with many of these requests representing follow-up questions to Commonwealth's responses), a draft

Environmental Impact Statement, and a three-volume, 991-page final Environmental Impact Statement. *See infra* pp. 28-64. The Commission also attached environmental and regulatory conditions to the Authorization to mitigate Project impacts. *See* Authorization Order Environmental Conditions, App. A, JA 45-71.

Thus, contrary to Environmental Petitioners' contention (Br. 70-71), the Commission extensively considered and weighed environmental impacts against the presumption in favor of authorization. *See* 15 U.S.C. § 717b(a), (c). The Commission's environmental analysis concluded that construction and operation of the Project would result in some adverse environmental impacts, but that most of these impacts would not be significant or would be reduced to less-than-significant levels with the implementation of recommended avoidance, minimization, and mitigation measures. *See* Authorization Order PP 15 & 26, JA 8-9, 12. This determination fully supports the Commission's conclusion that Environmental Petitioners had failed to make an "affirmative showing of inconsistency with the public interest . . . necessary to overcome the presumption in [Natural Gas Act] section 3." Authorization Order P 15, JA 8-9; Rehearing Order PP 8-10, JA 92-94;

see also Sierra Club, 867 F.3d at 203 ("To the extent Sierra Club suggests the Department [of Energy] should have weighed environmental concerns more heavily . . . , it fails to overcome the presumption in favor of exports. Notably, even if the Department determined the impacts were significant, it could still find that the public interest weighs in favor of allowing the exports.").

As the Commission explained, it reached this conclusion independently, "based on the entirety of the record, subject to certain conditions in the Authorization Order, and did not rely solely on [the Department of Energy]'s export authorization." Rehearing Order P 11, JA 94-95. Natural Gas Act section 3—which requires the Commission to approve the Project unless it determines that it is not consistent with public interest—demands no more. *See Ctr. for Biological Diversity*, 67 F.4th at 1188.

Although some Commissioners expressed the view that the Commission order should have provided a more "clear framework" concerning its public interest consideration under Natural Gas Act section 3, these views do not supply a basis for overturning the orders. *See* Glick Authorization Concurrence P 7, JA 74-75; Clements

Authorization Concurrence P 5, JA 87; Clements Rehearing Dissent P 2, JA 148-49. As described above and in Argument section IV, the Commission extensively addressed the Project's environmental impacts and attached conditions designed to mitigate and minimize such impacts; as conditioned, the Project was not inconsistent with the public interest. This analysis satisfies the Commission's Natural Gas Act obligations as interpreted by this Court and should be upheld.

III. THE COMMISSION APPROPRIATELY CONSIDERED ALTERNATIVE TERMINAL CONFIGURATIONS

NEPA requires the Commission to take a "hard look" at reasonable alternatives to a proposed natural gas project. *See Sierra Club*, 867 F.3d at 1367; 42 U.S.C. § 4332(2)(C)(iii). Reasonable alternatives are those "that are technically and economically practical or feasible and meet the purpose and need of the proposed action." 43 C.F.R. § 46.420(b); *see also City of Alexandria v. Slater*, 198 F.3d 862, 867 (D.C. Cir. 1999). The discussion of alternatives "need not be exhaustive," so long as there is "information sufficient to permit a reasoned choice." *Birckhead v. FERC*, 925 F.3d 510, 515 (D.C. Cir. 2019); *see also Nat. Res. Def. Council, Inc. v. Morton*, 458 F.2d 827, 834-36 (D.C. Cir. 1972) (describing rule of reason approach to discussion of

alternatives). The Court reviews the Commission's evaluation of alternatives under a deferential standard. *See, e.g., Minisink*, 762 F.3d at 111-12; *Myersville*, 783 F.3d at 1323-24.

The Commission here conducted an extensive alternatives analysis, addressing: a no-action alternative, system alternatives, alternative terminal sites, alternative terminal configurations, alternative liquefaction designs, alternative terminal power sources, alternative uses for methane, alternative pipeline routes, and alternative above-ground facility sites. *See* Environmental Impact Statement at 3-25 – 3-53, JA 279-307. Environmental Petitioners challenge only three of the numerous alternatives considered by the Commission: (1) combined-cycle (rather than simple-cycle) on-site power generation, (2) elimination of one of six liquefied natural gas storage tanks, and (3) carbon capture and sequestration facilities. Br. 53-67.

As discussed below, the Commission reasonably considered these alternatives as part of its extensive alternatives analysis, and explained its reasons for not requiring Commonwealth to adopt them. The Commission's informed determinations should be reviewed deferentially

and upheld. *See Ctr. for Biological Diversity*, 67 F.4th at 1181 (Court "will not set aside an agency action on NEPA grounds if the [Environmental Impact Statement] contains sufficient discussion of the relevant issues and opposing viewpoints and the agency's decision is fully-informed and well-considered") (cleaned up).

A. The Commission Reasonably Rejected a Proposal to Require Commonwealth to Use a Combined-Cycle Plant for On-Site Power Generation

Environmental Petitioners contend that the Commission arbitrarily rejected the possibility of using a natural-gas fired combined cycle power plant (in place of a simple cycle power plant) to generate 120 megawatts of electricity for Project use. Br. 55-60.[4] Environmental Petitioners' arguments amount to impermissible flyspecking, and should be rejected. *See Ctr. for Biological Diversity*, 67 F.4th at 1182.

[4] A simple-cycle power plant burns fuel in a gas-combustion turbine to drive an electric generator; a combined-cycle power plant additionally employs a heat recovery steam generator and steam turbine to generate additional power by using waste heat from the gas turbine. *See* Energy Primer at 49 (describing simple cycle and combined cycle power plant technologies); FERC Market Assessments Glossary, *available at*: https://www.ferc.gov/industries-data/market-assessments/overview/glossary#C.

The Project, as proposed and as authorized by the Commission, uses natural-gas fired combustion turbines to drive refrigeration compressors for each of the Project's six liquefaction trains, along with a 120-megawatt natural gas-fired simple cycle power plant to supply auxiliary power for the rest of the Project. *See* Environmental Impact Statement 3-47 – 3-48, JA 301-302; Commonwealth Resp. to Sept. 15, 2021 Envtl. Info. Req. Nos. 14-15 (filed Sept. 30, 2021), R. 265, JA 188-93 (describing Project's proposed power generation configuration and alternatives). Environmental Petitioners do not challenge the Commission's rejection of alternatives under which all the Project's power needs would be supplied by the commercial electric grid, or a 500-megawatt on-site combined-cycle power plant. *See* Rehearing Order PP 21-25, JA 100-102. Environmental Petitioners only challenge the Commission's rejection of a proposal to replace the Project's 120-megawatt simple-cycle power plant with a 120-megawatt combined-cycle power plant. *See* Br. 55-60.

With respect to the 120-megawatt combined-cycle alternative, the Commission explained that such a combined-cycle plant would only reduce overall site fuel consumption, and associated emissions, by "less

than 10 percent." Environmental Impact Statement 3-48, JA 302; Rehearing Order P 26, JA 103-104. Moreover, a 120-megawatt combined-cycle plant would require significant additional land (relative to the proposed simple-cycle power plant) to accommodate waste heat recovery equipment, a steam turbine, an air-cooled condenser, and water treatment facilities. *See* Environmental Impact Statement 3-48, JA 302. The additional land required by a combined-cycle plant—whether a smaller 120-megawatt plant or a 500-megawatt plant capable of supplying all the Project's power needs—"would require an expansion of the Terminal into eastern black rail habitat[5] and wetlands." *Id.* In these circumstances, the Commission concluded the combined-cycle alternative would not represent a "significant environmental advantage" over the "smaller simple cycle gas-powered system." *Id.*

Environmental Petitioners contend that NEPA requires the Commission to address exactly how much additional space would be required for a combined-cycle power plant. Br. 58. No precedent

[5] Although not at issue here, impacts on the threatened eastern black rail were of particular concern in the agency proceeding. *See, e.g.*, Rehearing Order PP 73-94, JA 134-44.

requires such a specific finding. All that is required is "information sufficient to permit a reasoned choice." *See Birckhead*, 925 F.3d at 925; *see also Ctr. for Biological Diversity*, 67 F.4th at 1182-83 ("Rigorously evaluating alternatives . . . does not require assessing each alternative under identical criteria. . . . The agency need not provide the same level of detailed analysis for each alternative that it provides for the action under review.").

Here, the Commission issued several environmental information requests to Commonwealth regarding alternative power configurations, including grid-based power, a 500-megawatt combined-cycle alternative, and the 120-megawatt combined-cycle alternative at issue. *See, e.g.*, Commonwealth Resp. to June 9, 2022 Envtl. Info. Request No. 7 (filed June 24, 2022), R. 499, JA 249; Commonwealth Resp. to Sept. 15, 2021 Envtl. Info. Req. Nos. 14-15, JA 188-93. The Commission found that both the 500-megawatt combined cycle alternative and the 120-megawatt alternative would encroach on eastern black rail habitat. *See* Rehearing Order P 26, JA 103-104; Environmental Impact Statement at 3-48, JA 302.

Contrary to Environmental Petitioners' assertion that emissions should have weighed more heavily in the Commission's balance (Br. 59), the Commission acted well within its discretion in weighing protection of eastern black rail habitat as an important consideration in rejecting both the 500-megawatt and the 120-megawatt combined-cycle alternatives. *See* Rehearing Order P 26, JA 103-104. As this Court has observed, the Commission "enjoys broad discretion to invoke its expertise in balancing competing interests and drawing administrative lines." *Minisink*, 762 F.3d at 111 (cleaned up). The Commission did so here; its balancing should be upheld. *See id.* at 112 (rejecting arguments that Commission should have "undertake[n] a more fulsome cost-benefit analysis" of one project alternative as "fall[ing] decidedly more into the 'flyspecking' camp than anything more"); *Friends of the Eel River v. FERC*, 720 F.2d 93, 101 (D.C. Cir. 1983) (declining to require FERC to "enlarge its inquiry," where resolution of issue involved "technical expertise [that] is properly left to the informed discretion of the responsible federal agency").

B. The Commission Reasonably Rejected a Proposal to Require Commonwealth to Eliminate One Liquefied Natural Gas Storage Tank

Environmental Petitioners next argue that the Commission failed to adequately evaluate the proposal that Commonwealth omit one of its proposed liquefied natural gas storage tanks. Br. 60-64. As configured, the Project comprises six liquefied natural gas storage tanks, with a capacity of 50,000 cubic meters per tank, for a total storage capacity of 300,000 cubic meters. Rehearing Order P 30, JA 105-106; Environmental Impact Statement at 3-46, JA 300.[6] Environmental Petitioners contend that Commonwealth should eliminate one of the storage tanks, and "use the space freed by the omitted sixth tank to reduce the terminal footprint." Br. 61.

The Commission reasonably considered and rejected this alternative configuration. As the Commission observed,

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[6] Commonwealth initially designed the Project to include six liquefied natural gas storage tanks, each with a capacity of 40,000 cubic meters. Environmental Impact Statement at 3-46, JA 300. Subsequently, Commonwealth revised its storage tank design in compliance with federal safety standards; the redesign increased the capacity of each storage tank to 50,000 cubic meters. *Id.*; *see also* Commonwealth Response to Sept. 15, 2021 Envtl. Info. Request No. 13, JA 184-85 (describing background relating to storage tank design modifications).

Commonwealth's six-tank configuration provides benefits in the form of improved operational flexibility during inclement weather events. Rehearing Order PP 30-31, JA 105-106. During an "adverse weather event" (such as fog or high winds) that closes the Calcasieu Ship Channel to shipping vessels, "additional storage capacity allows the facility to continue operating, possibly at a reduced rate, until such weather event has passed, and [shipping vessels] can resume operations." *Id.* P 31 & n.87, JA 106 (quoting Commonwealth Response to Sept. 15, 2021 Envtl. Info. Req. No. 13, JA 184).

As Commonwealth explained, the Project's design "has been optimized to make . . . efficient use of land," and the "ratio of . . . storage capacity versus liquefaction and export capacity" are based on "typical industry practice." Commonwealth Response to June 9, 2022 Envtl. Info. Request No. 9, JA 251. In particular, "[t]he operational buffer provided by the [liquefied natural gas] storage capacity of the sixth tank equates to approximately one day of operation, which is . . . aligned with industry best practices." *Id.*

In response to the Commission's inquiry regarding how often adverse weather events may require the Calcasieu Ship Channel to

close, Commonwealth explained that the channel closed 33 times from January 2021 through August 2021, an eight month period. Rehearing Order P 31 & n.88, JA 106; *see also* Commonwealth Response to Sept. 15, 2021 Envtl. Info. Request No. 13, JA 185-87 (listing closures). In light of this information, and in light of the fact that the Project only has a single berthing dock, "which limits the flexibility with which Commonwealth could reduce tank inventory when needed compared to facilities with multiple berths," the Commission determined that these "operational considerations [are] well-founded," supporting authorization of Commonwealth's six-tank design. Rehearing Order P 31, JA 106; *see also Ctr. for Biological Diversity*, 67 F.4th at 1183 (recognizing that "[s]ome alternatives will be more reasonable than others based on their economic and technological feasibility and how well they serve the purposes of the proposed action").

The Commission also reasoned that the operational benefits of the six storage tank design outweighed the potential adverse air impacts associated with increased flaring events in the event that Commonwealth was required to shut down and restart the Project in response to weather events. Rehearing Order P 30, JA 105-106;

Environmental Impact Statement at 3-46, JA 300. Environmental Petitioners assert that the Commission should have provided additional detail regarding these potential air impacts, in particular, how frequently the terminal would need to shut down and restart under a five-tank alternative. Br. 62.

Environmental Petitioners' arguments should be rejected. As described above, the Commission obtained information regarding closures of the Calcasieu Ship Channel due to adverse weather events during the January 2021 through August 2021 timeframe. *See* Rehearing Order P 31 & n.88, JA 106. It was not required to speculate regarding the number of times the terminal would need to shut down and restart under a five-tank alternative. Indeed, as Commonwealth explained, the frequency of extreme weather events during the lifespan of the Project is "speculative and cannot be predicted or planned for with any reasonable degree of certainty, as would be the circumstances of the shutdowns and restarts required by each unique event should they occur." Commonwealth Response to June 9, 2022 Envtl. Info. Request No. 9, JA 251.

Environmental Petitioners also contend that the Commission's consideration of the five-tank alternative was inconsistent with its consideration of the combined-cycle generation alternative. Br. 63-64. Environmental Petitioners believe that the Commission gave greater weight to wetland impacts than to air impacts in rejecting the combined-cycle generation alternative, but gave greater weight to air impacts over wetland impacts in rejecting the five-tank alternative. *Id.* But the Commission's analysis was not so simple. As described above, the Commission did not take a categorical approach of weighing wetland impacts versus air impacts in assessing the five-tank alternative and the combined-cycle alternative. Rather, the Commission meaningfully addressed each alternative based on all relevant considerations.

For example, the Commission accorded significant weight to the operational flexibility provided by Commonwealth's six-tank design. *See* Rehearing Order PP 30-31, JA 105-106. On the other hand, the Commission found that removal of one storage tank would reduce Project land use by—at most—2.3 acres. Environmental Impact Statement 3-46, JA 300 (also observing that Commonwealth's storage

tank redesign did not increase the Project's footprint from the originally proposed design). "Given this modest change in acreage," the Commission concluded that "the possible benefits of the increased storage capacity, with no increase in the Terminal footprint from the original application, would be preferable to the potential adverse air impacts due to increased flaring events of Commonwealth having to shut down and restart the Terminal at a higher annual frequency than would otherwise occur." *Id.*; Rehearing Order P 30, JA 105-106.

In reaching this conclusion, the Commission reasonably exercised its judgment and balanced competing considerations. *See NRG Power Mktg., LLC v. FERC*, 718 F.3d 947, 955-56 (D.C. Cir. 2013) (when presented with "intensely practical difficulties that demand a solution, FERC must be given the latitude to balance the competing considerations and decide on the best resolution") (cleaned up); *see also Ctr. for Biological Diversity*, 67 F.4th at 1183 (NEPA does not require agency to "assess[ ] each alternative under identical criteria"). The Commission's reasoned judgment should be upheld.

C. The Commission Reasonably Rejected a Proposal to Require Commonwealth to Utilize Carbon Capture and Sequestration

Environmental Petitioners assert that the Commission failed to justify its determination that carbon capture and sequestration—a technology designed to reduce emissions—is not feasible for the Project. Br. 64-67. As the Commission explained, although the Project is technically able to capture carbon dioxide, there is "insufficient . . . sequestration infrastructure in place to make [carbon capture and sequestration] viable for the Project." Rehearing Order P 28, JA 104-105 (noting that there are "no . . . sequestration facilities beneath the Gulf of Mexico seabed in Cameron Parish or near the project site, and nearby projects are still in development"); Environmental Impact Statement 4-398, JA 382. The Commission pointed out that the closest operational sequestration facility is the Denbury Green pipeline, which is located 37 miles from the Project. Rehearing Order P 28, JA 104-105. (On appeal, Environmental Petitioners do not contend that the Denbury Green pipeline represents a feasible sequestration facility for the Project.)

Environmental Petitioners argue that the Commission should have considered whether sequestration would be feasible using a not-yet-approved and not-yet-constructed offshore sequestration site proposed by a different developer. Br. 66 (citing Venture Global's proposed CP2 liquefied natural gas project). The Commission appropriately determined that it was "unable to evaluate the feasibility" of Commonwealth using the proposed CP2 sequestration facility. *See* Environmental Impact Statement 4-399 & n.186, JA 383 (citing Venture Global CP2 Supp. Response to Envtl. Info. Request No. 1-a, FERC Dkt. No. CP22-21 (filed July 22, 2022), JA 505-507 (describing proposed carbon capture and sequestration process, but stating that such facilities are "not within the Commission's Natural Gas Act jurisdiction")).[7] In these circumstances and on this record, the Commission reasonably rejected the carbon capture and sequestration alternative. *See Cameron LNG, LLC*, 148 FERC ¶ 61,237, P 38 (2014)

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[7] The Commission issued a final Environmental Impact Statement for the CP2 project in July 2023, which evaluates carbon capture and sequestration facilities within the footprint of the proposed terminal as FERC jurisdictional components of the proposed project, and facilities outside the proposed project site as non-FERC jurisdictional facilities. CP2 LNG and CP2 Express Project, Final Envtl. Impact Statement 2-9, FERC Dkt. Nos. CP22-21 and CP22-22 (July 2023), JA 510.

(carbon capture and storage "reasonably eliminated . . . from further consideration" where there was no existing infrastructure in place to make sequestration feasible).

IV. THE COMMISSION APPROPRIATELY CONSIDERED GREENHOUSE GAS EMISSIONS ASSOCIATED WITH THE PROJECT

Consistent with NEPA, the Commission analyzed the reasonably foreseeable and causally connected greenhouse gas emissions associated with the Project—here, the direct emissions associated with the Project's construction and operation. *See* Authorization Order PP 73-83, JA 38-42 (summarizing Environmental Impact Statement findings and explaining that the Commission's analysis is confined to direct emissions from Project construction and operation because the Department of Energy's independent decision regarding gas exports "breaks the NEPA causal chain") (citing *Sierra Club*, 827 F.3d at 48); Rehearing Order PP 39-45, JA 112-17 (same); *see also Ctr. for Biological Diversity*, 67 F.4th at 1185 (FERC "properly recognized the limits of its delegated statutory authority" and "cabined its NEPA analysis" of liquefied natural gas export terminal to direct greenhouse gas emissions, because its "lack of jurisdiction over export approvals . . .

means it has no NEPA obligation stemming from the effects of export-bound gas") (cleaned up).

Environmental Petitioners raise no claims concerning indirect emissions relating to "upstream" natural gas production or "downstream" overseas consumption of natural gas exported from the Project. Br. 28 n.6. Accordingly, the Commission's treatment of indirect greenhouse gas emissions is not at issue here. On review, Environmental Petitioners only contend that the Commission should have made a formal determination regarding the "significance" of greenhouse gas emissions associated with Project construction and operation. *See* Br. 26-30.

Environmental Petitioners' significance argument fails because the Commission prepared a comprehensive Environmental Impact Statement that (1) quantified greenhouse gas emissions associated with construction and operation of the Project, (2) contextualized these emissions by comparing them to national and state emissions levels and reduction targets, (3) included a qualitative analysis of potential climate impacts relating to the Project, and (4) disclosed, for informational purposes, staff estimates of the social cost of carbon value of Project

emissions. *See* Authorization Order PP 74-76, JA 38-40; Rehearing Order PP 39-41, JA 112-14; Environmental Impact Statement 4-394 – 4-398, JA 378-82.

This Court has upheld, on multiple occasions, orders explaining that the Commission could not make a determination as to whether project-level emissions are significant or not for purposes of evaluating climate change impacts. *See Ctr. for Biological Diversity*, 67 F.4th at 1184 & n.4 (upholding Commission's decision not to apply social cost of carbon to determine significance) (citing *EarthReports*, 828 F.3d at 956; *Sierra Club v. FERC*, 672 F. App'x 38, 39 (D.C. Cir. 2016) (unpublished); and *Appalachian Voices v. FERC*, No. 17-1271, 2019 WL 847199, at *2 (D.C. Cir. Feb. 19, 2019) (unpublished)); *see also Del. Riverkeeper Network v. FERC*, 45 F.4th 104, 111-12 (D.C. Cir. 2022) (discussing Commission's rejection of social cost of carbon methodology for assessing climate change impacts, but finding that petitioner failed to preserve issue for judicial review); *Food & Water Watch v. FERC*, 28 F.4th 277, 289 (D.C. Cir. 2022) (rejecting "bare assertion that the Commission should have assessed the significance of climate impacts" where assertion was "unsupported by a validly raised criticism of the

Commission's reasoning or any workable alternative method"). As discussed below, the Commission's analysis here satisfies NEPA and is consistent with this Court's precedent.

A. The Commission's Comprehensive Analysis of Greenhouse Gas Emissions and Potential Climate Impacts Associated with Construction and Operation of the Project Satisfies NEPA

An agency's consideration of a "'major Federal action significantly affecting the quality of the human environment' triggers . . . the obligation to prepare an Environmental Impact Statement discussing in detail the environmental impact of the proposed action, alternatives to the action, and other considerations." *Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301, 1322 (D.C. Cir. 2015) (quoting 42 U.S.C. § 4332(2)(C)) (cleaned up). "An agency may preliminarily prepare an Environmental Assessment to determine whether the more rigorous [Environmental Impact Statement] is required." *Id.* (cleaned up) (explaining that an Environmental Impact Statement is "unnecessary if an agency makes a 'finding of no significant impact' on the human environment"); *see also Food & Water Watch*, 28 F.4th at 289 ("[O]ne primary function of an environmental assessment is to 'provide sufficient evidence and analysis for determining whether to

prepare an environmental impact statement or a finding of no significant impact.'") (citing 40 C.F.R. § 1508.9(a)(1))[8]; *see also* 40 C.F.R. § 1501.3(a)-(b) (federal agencies should determine the likelihood of "significant effects" for purposes of "assessing the appropriate level of NEPA review"—i.e., preparation of an Environmental Impact Statement or Environmental Assessment—which involves an analysis of "the potentially affected environment and degree of the effects of the action.").[9]

At the outset, consistent with NEPA, the Commission here prepared an Environmental Impact Statement, rather than a more concise Environmental Assessment. *See* 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1501.3(a)-(b); 18 C.F.R. § 380.7(a) (FERC Environmental Impact Statement will include summaries of the "significant environmental impacts of the proposed action"). Substantively, the

[8] Language that formerly appeared at 40 C.F.R. § 1508.9(a)(1) was revised and moved to 40 C.F.R. § 1501.5. *See* Council on Envtl. Quality, Update to the Regulations Implementing the Procedural Requirements of NEPA, 85 Fed. Reg. 43,304, 43,323 (Sept. 14, 2020).

[9] A newly enacted provision of NEPA confirms that an agency may proceed with an Environmental Assessment even where the significance of certain environmental effects is "unknown." *See* 42 U.S.C. § 4336(b)(2).

Commission's Environmental Impact Statement reflects the agency's comprehensive consideration of environmental and climate change impacts relating to Project emissions, consistent with NEPA. *See* Environmental Impact Statement 4-211 – 4-232, JA 328-49, 4-394 – 4-400, JA 378-84; *see also Am. Rivers v. FERC*, 895 F.3d 32, 49 (D.C. Cir. 2018) ("Evaluating an action's environmental 'significance' requires analyzing both the context in which the action would take place and the intensity of its impact.") (citing 40 C.F.R. § 1508.27);[10] *see also* 40 C.F.R. § 1502.16(a)(1) (Environmental Impact Statement must discuss the "environmental impacts of the proposed action and reasonable alternatives to the proposed action and the significance of those impacts").

The Commission first determined that Project construction would result in 547,314 tons of carbon dioxide equivalent ("CO2e"), and emissions from Project operation would result in an annual increase of approximately 3,559,091 tons of CO2e per year. Authorization Order

[10] Language that formerly appeared at 40 C.F.R. § 1508.27 was revised and moved to 40 C.F.R. § 1501.3(b). *See* Council on Envtl. Quality, Update to the Regulations Implementing the Procedural Requirements of NEPA, 85 Fed. Reg. 43,304, 43,322 (Sept. 14, 2020).

P 74 & nn.186-87, JA 38 (citing Environmental Impact Statement, 4-213 – 4-220, JA 330-37, 4-224, JA 341).

The Environmental Impact Statement then placed these emissions in context by comparing Project emissions to both the total greenhouse gas emissions of the United States as a whole, and Louisiana state greenhouse gas inventories. *See* Environmental Impact Statement 4-396 – 4-397, JA 380-81 (finding that (1) based on 2020 national levels, Project construction could potentially increase CO2e emissions by 0.01 percent, while Project operations could potentially increase CO2e emissions by 0.06 percent, and (2) based on Louisiana 2019 levels, Project construction could potentially increase CO2e emissions by 0.3 percent, while Project operations could potentially increase CO2e emissions by 1.7 percent). The Environmental Impact Statement also compared Project emissions to Louisiana state greenhouse gas emissions reduction targets. *See id.*

The Commission acknowledged that the Project would "increase the atmospheric concentration of [greenhouse gases], and would contribute cumulatively to climate change." Authorization Order P 75, JA 38-39 (citing Environmental Impact Statement 4-396, JA 380).

However, the Environmental Impact Statement explained that it could not characterize the Project's greenhouse gas emissions as significant or insignificant with respect to climate change impacts, due to the lack of a "methodology to attribute discrete, quantifiable, physical effects on the environment resulting from the Project's incremental contribution" to greenhouse gas emissions, and lack of an "established threshold for determining the Project's significance when compared to established [greenhouse gas] reduction targets at the state or federal level." Environmental Impact Statement 4-396, JA 380 (also citing pending agency proceedings regarding the Commission's approach to significance determinations going forward).[11]

B. Environmental Petitioners Fail to Demonstrate that the Commission Was Required to Make a Formal Significance Determination

Despite the weight of contrary precedent (*see supra* pp. 44-45), Environmental Petitioners contend that the Commission should have used either the social cost of carbon tool, or a formerly-proposed significance threshold that the agency has expressly stated does not

[11] *See* FERC Dkt. Nos. PL18-1 and PL21-3. Filings in these proceedings are available on the Commission's website at: https://elibrary.ferc.gov/eLibrary/search.

apply to new or pending applications, to make a formal significance determination here. The Commission reasonably explained why neither metric enables such a determination. *See* Rehearing Order PP 39-41, JA 112-14; Authorization Order PP 73-76, JA 38-40.

The social cost of carbon is an administrative tool that "quantifies in monetary terms the climate change impact resulting from greenhouse gas emissions." *Del. Riverkeeper Network*, 45 F.4th at 111. At the time the Environmental Impact Statement issued, litigation was pending concerning federal agencies' use of the Interagency Working Group's interim values for calculating the social cost of greenhouse gas emissions, and the Council on Environmental Quality was developing additional guidance regarding application of the social cost of carbon tool in federal decision-making processes, including in NEPA analyses. Environmental Impact Statement 4-397 – 4-398, JA 381-82.[12]

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[12] *See Missouri v. Biden*, 52 F.4th 362 (8th Cir. 2022), *cert. denied*, S. Ct. No. 22-1248 (Oct. 10, 2023). The Council on Environmental Quality issued interim guidance concerning the social cost of carbon tool to "assist agencies in analyzing greenhouse gas (GHG) and climate change effects of their proposed actions" under NEPA in January 2023. *See* 88 Fed. Reg. 1196 (Jan. 9, 2023). As explained in the Environmental Impact Statement, the Commission has not yet determined what modifications may be needed to render the social cost

In *EarthReports*, petitioners unsuccessfully argued that the Commission should have "present[ed] values calculated with the full range of rates." 828 F.3d at 956. Here, Commission staff took that additional step, estimating the social cost of the Project's greenhouse gas emissions over its expected operational life, using a range of assumptions. *See* Environmental Impact Statement 4-397 – 4-398, JA 381-82 (explaining that staff used the methods and values contained in the Interagency Working Group's then-current draft guidance, but "different values would result from the use of other methods," and further explaining that staff assumed discount rates of 5, 3, and 2.5 percent, and also applied a fourth high-impact scenario).

These calculations produced values ranging from approximately $900 million to $5.5 billion. *Id.* Meanwhile, calculations "using the 95th percentile of the social cost of [greenhouse gases]" with a 3 percent discount rate produced a total cost over $10 billion. *See id.* & n.182, JA 381-82 ("This value represents 'higher-than-expected economic impacts from climate change further out in the tails of the [social cost]

of carbon tool "useful for project-level analyses." Environmental Impact Statement 4-397, JA 381.

distribution.' In other words, it represents a higher impact scenario with a lower probability of occurring.").

The Commission explained that the Environmental Impact Statement provided these social cost estimates "[f]or informational purposes." Rehearing Order P 40, JA 112-14. These estimates do not enable the Commission to determine whether Project emissions "are significant or not significant in terms of their impact on global climate change." *Id.* & n.128, JA 112-14 (citing *Mountain Valley Pipeline, LLC*, 161 FERC ¶ 61,043, P 296 (2017) (providing several reasons why the social of carbon tool is not appropriate for assessing the significance of project-level emissions), *aff'd*, *Appalachian Voices*, 2019 WL 847199, at *2; and *Del. Riverkeeper v. FERC*, 45 F.4th 104, 111 (same)). In particular, the Commission highlighted that "there are no criteria to identify what monetized values are significant for NEPA purposes, and we are currently unable to identify any such appropriate criteria." Rehearing Order P 40 & n.129, JA 112-14 (citing FERC cases providing multiple reasons why the social cost of carbon tool "is not an appropriate level measure of project-level climate change impacts and their significance").

Environmental Petitioners assert that the Commission's rationale for not ascribing significance to Project emissions has "shifted over time." *See* Br. 32-35. But the Commission's reasoning has remained constant through multiple orders on review before this Court. The Commission's reasoning that "there are no criteria to identify what monetized values are significant for NEPA purposes" has appeared in the Commission's orders since at least 2016. *See EarthReports*, 828 F.3d at 956 (accepting the Commission's rationale for not employing the social cost of carbon for project-specific review, including because "there are no established criteria identifying the monetized values that are to be considered significant for NEPA purposes"); *Ctr. for Biological Diversity*, 67 F.4th at 1184 (citing same rationale as "reasonable and mirror[ing] analysis we have previously upheld" in *EarthReports*, 828 F.3d at 956); *Mountain Valley Pipeline, LLC*, 161 FERC ¶ 61,043, P 296; *Del. Riverkeeper*, 45 F.4th at 111. Here, the wide range of values produced by the Commission's calculations supports its determination that the social cost of carbon tool does not enable it to make a credible significance determination. *See* Rehearing Order P 40-41, JA 112-14.

As the Commission explained, there is no other "currently scientifically accepted method" that would enable it to determine significance in this context. Rehearing Order P 40, JA 112-14. Although the Commission previously issued an interim statement that proposed to establish a NEPA significance threshold of 100,000 tons per year of CO2e "as a matter of policy," that policy has been "suspended and opened to further public comment" as a draft statement. Rehearing Order P 41 & n.135, JA 114 (citing Certification of New Interstate Natural Gas Facilities, 178 FERC ¶ 61,197, P 2 (2022) (explaining that the Commission will not apply draft statement to new and pending applications)).[13] Contrary to Environmental Petitioners' contention (Br. 30-32), there is no basis for requiring the Commission to apply a formerly-proposed, now-suspended policy threshold to assess significance here. *Cf. Vecinos para el Bienestar v. FERC,* 6 F.4th 1321,

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[13] Contrary to Environmental Petitioners' assertion, the Rehearing Order did not "walk[ ] back" (Br. 33) its reliance on these ongoing agency proceedings. *See* Rehearing Order P 41 & n.135, JA 114. In any event, the pendency of these proceedings merely bolsters the Commission's determination that it lacks, at present, "accepted tools or methods" to evaluate significance. *See id.* P 41, JA 114.

1329 (D.C. Cir. 2021) (noting petitioners' argument that 40 C.F.R. § 1502.21(c) "required [the Commission] to use the social cost of carbon protocol or some other generally accepted methodology" to evaluate significance).[14]

The Commission's extensive analysis here satisfies its obligations under NEPA. This Court has held that an agency may quantify a proposed project's reasonably foreseeable greenhouse gas emissions and compare them to relevant national and state emissions levels as a "reasonable proxy" for assessing the project's climate impacts. *See WildEarth Guardians v. Jewell*, 738 F.3d 298, 309 (D.C. Cir. 2013); *see also Sierra Club*, 867 F.3d at 1374 ("Quantification [of greenhouse gas emissions] would permit the agency to compare emissions from this

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[14] The Commission's case-specific significance determination in *Northern Natural Gas Co.*, 174 FERC ¶ 61,189 (2021), does not help Petitioners. *See* Br. 31. In that case, the Commission did not rely on the social cost of carbon or any other generally accepted methodology. Rather, it acknowledged the ongoing agency proceeding concerning approaches to significance determinations, but found that, "[h]owever the Commission's approach to the significance analysis evolves, the reasonably foreseeable [greenhouse gas] emissions associated with this project would not be considered significant." 174 FERC ¶ 61,189 PP 33-36 (finding project operations would increase national greenhouse gas emissions by 0.000006 percent and state emissions by 0.000078 percent and 0.0002 percent).

project to emissions from other projects, to total emissions from the state or the region, or to regional or national emissions-control goals."). Here, the Commission not only quantified and compared greenhouse gas emissions associated with the Project to national and state levels, but also extensively discussed potential impacts and provided, for informational purposes, social cost estimates. Based on this extensive record, the Commission reasonably concluded that it had "sufficient information to proceed." Authorization Order P 76, JA 39-40; *see also id*. P 84, JA 42 (agreeing with Environmental Impact Statement that the Project, if implemented subject to environmental mitigation conditions, constitutes an "environmentally acceptable action"). Nothing more was required. *See Ctr. for Biological Diversity*, 67 F.4th at 1184 & n.4; *EarthReports*, 828 F.3d at 956; *WildEarth Guardians*, 738 F.3d at 309.

V. THE COMMISSION APPROPRIATELY CONSIDERED AIR QUALITY IMPACTS ON ENVIRONMENTAL JUSTICE COMMUNITIES

"The principle of environmental justice encourages agencies to consider whether the projects they sanction will have a 'disproportionately high and adverse' impact on low-income and

predominantly minority communities." *Sierra Club*, 867 F.3d at 1368 (quoting Exec. Order 12,898, § 1-101, 59 Fed. Reg. 7629 (Feb. 11, 1994)). Under NEPA, an agency must "take a hard look at environmental justice issues," but is "not required to select the course of action that best serves environmental justice." *Id.*

The Commission follows the directive of Executive Order 12,898 when conducting NEPA reviews of proposed natural gas projects; that Executive Order directs federal agencies to identify and address "'disproportionately high and adverse human health or environmental effects' of their actions on minority and low-income populations (i.e., environmental justice communities)." Authorization Order P 45, JA 20-21 (citing Exec. Order 12,898 and Exec. Order 14,008, 86 Fed. Reg. 7619 (Feb. 1, 2021)). Accordingly, the Environmental Impact Statement evaluated impacts on environmental justice communities in the vicinity of the Project (*see id.* 4-187 – 4-199, JA 308-17, 4-383 – 4-388, SJA 516-21), and discussed regional air quality impacts, with particular

emphasis on environmental justice communities (*see id.* 4-201 – 4-232, JA 318-49, 4-387 – 4-388, SJA 520-21).[15]

As relevant here, the Commission conducted an in-depth review of air dispersion modeling results to assess the Project's air quality impacts. *See* Environmental Impact Statement 4-197 – 4-199, JA 315-17, 4-201 – 4-232, JA 318-49). This air dispersion modeling analysis is "designed to be conservative and to over-state pollutant impacts from the Project and [state] emission inventory sources." Rehearing Order P 57, JA 125.

In performing this analysis, the Commission relied on the National Ambient Air Quality Standards ("NAAQS") established by the Environmental Protection Agency. *See* 42 U.S.C. § 7409 (NAAQS standards establish limits on certain air pollutants, "which in the judgment of [the Environmental Protection Agency] are requisite to protect the public health"). This Court has upheld the Commission's reasonable reliance on the NAAQS "as a standard of comparison for air-

[15] A map showing environmental justice communities in the Project's vicinity appears at page 4-193, JA 314, of the Environmental Impact Statement.

quality impacts." *See Sierra Club*, 867 F.3d at 1370 (upholding Commission's analysis of cumulative air quality impacts of proposed pipeline and conclusion that air pollution levels would "remain below harmful thresholds"). As this Court explained, "[b]y presenting the project's expected emissions levels and the NAAQS standards side-by-side, the [Environmental Impact Statement] enable[s] decisionmakers and the public to meaningfully evaluate the project's air-pollution effects by reference to a generally accepted standard." *Id.* at 1370 n.7.

Here, the Commission explained that Cameron Parish, where the Project will be located, "meets or exceeds the NAAQS for all criteria [air] pollutants and is in attainment." Rehearing Order P 57 & n.201, JA 125 (citing Environmental Impact Statement 4-204, JA 321). Air dispersion modeling for the Project predicted potential exceedances of the NAAQS for nitrogen dioxide. *See* Environmental Impact Statement 4-225 – 4-228, JA 342-45. But a full impacts analysis (modeling emissions from all sources in the vicinity, including other facilities under review by FERC) showed that the Project's contribution to such potential exceedances are "negligible." *See* Environmental Impact Statement 4-228 – 4-232, JA 345-49.

On the basis of these analyses, the Commission reasonably concluded that the Project would not "cause or contribute" to an exceedance of the NAAQS, and would not result in significant air quality impacts on environmental justice communities. *See* Rehearing Order PP 46-57 JA 118-25; Authorization Order PP 62-63, JA 31-33 (same). There is no basis for Environmental Petitioners' contention that the Commission's "reliance on Clean Air Act provisions that focus on incremental impacts led it to ignore cumulative impacts, in violation of NEPA." Br. 42. The Commission's environmental analysis "considered the cumulative impacts of the Project with other projects or actions within the geographic and temporal scope of the Project." *See* Environmental Impact Statement 4-342 – 4-399, JA 353-83. As the Commission explained, "the dispersion modeling analysis conducted as part of the Project, coupled with source culpability analyses, constitutes an in-depth review of local air quality impacts." *Id.* 4-232, JA 349. Moreover, the Commission did not merely accept Commonwealth's analyses—in the course of its review, Commission staff requested significant additional information from Commonwealth concerning air quality impacts on environmental justice communities. *See, e.g.*,

Commonwealth Resp. to Sept. 20, 2021 Envtl. Info. Req. Nos. 1 and 2 (filed Oct. 5, 2021), R. 278, JA 194-98; Commonwealth Resp. to Oct. 18, 2021 Envtl. Info. Req. No. 3 (filed Oct. 25, 2021), R. 293, JA 199-200.

Environmental Petitioners also challenge the Commission's reliance on the Environmental Protection Agency's interim significant impact level for nitrogen dioxide as a threshold for measuring air quality impacts. Br. 46-52; *see generally Sierra Club v. Envtl. Prot. Agency*, 955 F.3d 56, 59 (D.C. Cir. 2020) (discussing significant impact levels). Just as the Commission reasonably relied on the NAAQS standard, the Commission reasonably relied on the Environmental Protection Agency's significant impact levels. *See Sierra Club*, 867 F.3d at 1370 n.7 (agency's "choice among reasonable analytical methodologies is entitled to deference") (cleaned up).[16]

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[16] Sierra Club did not raise this argument until the agency rehearing stage, and the Commission rejected the argument as belatedly raised. *See* Rehearing Order P 51 & n.171, JA 120-21 (citing *Turlock Irrigation Dist.*, 175 FERC ¶ 61,144, P 14 (2021) (explaining that the Commission "looks with disfavor on parties raising issues for the first time on rehearing that could have been raised earlier, in part because other parties are not permitted to respond to requests for rehearing")); *see also NO Gas Pipeline v. FERC*, 756 F.3d 764, 770 (D.C. Cir. 2014) (dismissing constitutional claim as untimely where petitioner raised issue for the first time on rehearing, observing that "FERC regularly rejects requests for rehearing that raise issues not previously

First, Environmental Petitioners' policy arguments (*e.g.*, Br. 49) concerning the Environmental Protection Agency's adoption of interim significant levels for one-hour nitrogen dioxide do not demonstrate that the Commission acted unreasonably in relying on these standards. *See City of Boston Delegation v. FERC*, 897 F.3d 241, 255 (D.C. Cir. 2018) ("Agencies can be expected to respect the views of such other agencies as to those problems for which those other agencies are more directly responsible and more competent.") (cleaned up); *see also* Rehearing Order P 52, JA 121-22 (Environmental Petitioners' arguments challenging EPA's significant impact levels and NAAQS "because they do not eliminate all risk" are "inapposite").

As the Commission explained, "[t]he significant impact level for the one-hour nitrogen dioxide . . . standard is 7.5 micrograms per cubic meter, which is just four percent of the NAAQS threshold (188 micrograms per cubic meter). The project's highest contribution to any potential predicted NAAQS exceedance is less than 1.5% of the

presented where there is no showing that the issue is 'based on matters not available for consideration . . . at the time of the final decision'") (citing 18 C.F.R. § 385.713(c)(3)). Nevertheless, the Commission addressed these arguments on rehearing. *See* Rehearing Order PP 51-57, JA 120-25.

NAAQS." Rehearing Order P 51, JA 120-21. Thus, "existing industry and air pollutant emissions sources in the region are driving the potential predicted NAAQS exceedances in the cumulative dispersion model." *Id.* & n.174, JA 120-21 (citing Environmental Impact Statement App. H, Table H-2, JA 406).

The Commission also observed that its authorization of the Project is "conditioned upon its compliance with all air permitting requirements." Rehearing Order P 57, JA 125.[17] It also acknowledged that, "[a]lthough the Project would be in compliance with the NAAQS and the NAAQS are designated to protect sensitive populations, . . . NAAQS attainment alone may not assure there is no localized harm to such populations" due to other factors. Environmental Impact Statement 4-198, JA 316. Accordingly, the Environmental Impact Statement listed measures that Commonwealth has committed to undertake to minimize and mitigate impacts on environmental justice communities. *Id.*

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[17] The Louisiana Department of Environmental Quality has issued Clean Air Act permits for the Project. Sierra Club is challenging the issuance of these permits in the Fifth Circuit and in Louisiana state court. *See* Br. 48 n.12.

The Commission here took the required hard look in evaluating air quality impacts on environmental justice communities. *See Sierra Club*, 867 F.3d at 1370-71 (Commission's analysis of air quality impacts on environmental justice communities "fulfilled NEPA's goal of guiding informed decisionmaking," where agency "took seriously" concerns about siting pipeline in "a community that already has a high concentration of polluting facilities," among other things, through its evaluation of pipeline route alternatives); *Ctr. for Biological Diversity*, 67 F.4th at 1181 (NEPA "requires agencies to evaluate the environmental effects of their actions, but the preparation of an environmental impact statement will never force an agency to change the course of action it proposes"). The Commission's analysis should be upheld as fully consistent with NEPA.

CONCLUSION

For the foregoing reasons, the Court should deny the petitions for review.

Respectfully submitted,

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October 27, 2023

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g) and Circuit Rule 32(e), I certify that this brief complies with the type-volume limitation in Fed. R. App. P. 32(a)(7)(B), because this brief contains 11,351 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

I further certify that this brief complies with the type-face 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 Century Schoolbook 14-point font using Microsoft Word 365.

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October 27, 2023

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vides 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

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
....	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

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
....	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

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
....	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.

Statutory Notes and Related Subsidiaries

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.
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§ 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 promulgating the rule shall submit to the Comptroller General and make available to each House of Congress—

(i) a complete copy of the cost-benefit analysis of the rule, if any;

(ii) the agency's actions relevant to sections 603, 604, 605, 607, and 609;

(iii) the agency's actions relevant to sections 202, 203, 204, and 205 of the Unfunded Mandates Reform Act of 1995; and

(iv) any other relevant information or requirements under any other Act and any relevant Executive orders.

(C) Upon receipt of a report submitted under subparagraph (A), each House shall provide copies of the report to the chairman and ranking member of each standing committee with jurisdiction under the rules of the House of Representatives or the Senate to report a bill to amend the provision of law under which the rule is issued.

(2)(A) The Comptroller General shall provide a report on each major rule to the committees of

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(c) Location

The Secretary shall locate such office at a university with expertise and experience in the matters specified in subsection (b).

(Pub. L. 106–398, §1 [div. C, title XXXI, §3197], Oct. 30, 2000, 114 Stat. 1654, 1654A–482.)

Editorial Notes

CODIFICATION

Section was enacted as part of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7144e. Office of Indian Energy Policy and Programs

(a) Establishment

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

(b) Duties of Director

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

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

(2) reduce or stabilize energy costs;

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

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

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

Editorial Notes

REFERENCES IN TEXT

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

SUBCHAPTER III—TRANSFERS OF FUNCTIONS

§ 7151. General transfers

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

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

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

Editorial Notes

REFERENCES IN TEXT

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

Executive Documents

EMERGENCY PREPAREDNESS FUNCTIONS

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

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

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

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

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

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

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

(c) Executive Order No. 11912, as amended [set out as a note under 42 U.S.C. 6201], relating to energy policy

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

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

(a) Executive Order No. 10485 of September 3, 1953, [set out as a note under 15 U.S.C. 717b], relating to certain facilities at the borders of the United States is amended by deleting Section 2 thereof, and by deleting ''Federal Power Commission'' and ''Commission'' wherever those terms appear in Sections 1, 3 and 4 of such Order and substituting for each ''Secretary of Energy''.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

''Sec. 610. Whenever the Administrator of General Services believes that the functions of an Executive

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

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

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

SEC. 6. This Order shall be effective as of October 1, 1977, the effective date of the Department of Energy Organization Act [this chapter] pursuant to the provisions of section 901 [42 U.S.C. 7341] thereof and Executive Order No. 12009 of September 13, 1977 [formerly set out as a note under 42 U.S.C. 7341], and all actions taken by the Secretary of Energy on or after October 1, 1977, which are consistent with the foregoing provisions are entitled to full force and effect.

JIMMY CARTER.

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

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

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

Editorial Notes

CODIFICATION

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

§ 7152. Transfers from Department of the Interior

(a) Functions relating to electric power

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

(A) the Southeastern Power Administration;

(B) the Southwestern Power Administration;

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

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

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

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

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

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

(d) Functions of Bureau of Mines

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

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

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

(3) coal preparation and analysis.

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

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

[2] See References in Text note below.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

Pub. L. 112–74, div. B, title III, Dec. 23, 2011, 125 Stat. 875.
Pub. L. 111–85, title III, Oct. 28, 2009, 123 Stat. 2871.
Pub. L. 111–8, div. C, title III, Mar. 11, 2009, 123 Stat. 625.
Pub. L. 110–161, div. C, title III, Dec. 26, 2007, 121 Stat. 1966.
Pub. L. 109–103, title III, Nov. 19, 2005, 119 Stat. 2277.
Pub. L. 108–447, div. C, title III, Dec. 8, 2004, 118 Stat. 2957.
Pub. L. 108–137, title III, Dec. 1, 2003, 117 Stat. 1859.
Pub. L. 108–7, div. D, title III, Feb. 20, 2003, 117 Stat. 153.
Pub. L. 107–66, title III, Nov. 12, 2001, 115 Stat. 508.
Pub. L. 106–377, §1(a)(2) [title III], Oct. 27, 2000, 114 Stat. 1441, 1441A–78.
Pub. L. 106–60, title III, Sept. 29, 1999, 113 Stat. 494.
Pub. L. 105–245, title III, Oct. 7, 1998, 112 Stat. 1851.
Pub. L. 105–62, title III, Oct. 13, 1997, 111 Stat. 1334.
Pub. L. 104–206, title III, Sept. 30, 1996, 110 Stat. 2998.
Pub. L. 104–46, title III, Nov. 13, 1995, 109 Stat. 416.
Pub. L. 103–316, title III, Aug. 26, 1994, 108 Stat. 1719.
Pub. L. 103–126, title III, Oct. 28, 1993, 107 Stat. 1330.
Pub. L. 102–377, title III, Oct. 2, 1992, 106 Stat. 1338.
Pub. L. 102–104, title III, Aug. 17, 1991, 105 Stat. 531.
Pub. L. 101–514, title III, Nov. 5, 1990, 104 Stat. 2093.
Pub. L. 101–101, title III, Sept. 29, 1989, 103 Stat. 661.
Pub. L. 100–371, title III, July 19, 1988, 102 Stat. 870.
Pub. L. 100–202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–124.

§ 7172. Jurisdiction of Commission

(a) Transfer of functions from Federal Power Commission

(1) There are transferred to, and vested in, the Commission the following functions of the Federal Power Commission or of any member of the Commission or any officer or component of the Commission:

(A) the investigation, issuance, transfer, renewal, revocation, and enforcement of licenses and permits for the construction, operation, and maintenance of dams, water conduits, reservoirs, powerhouses, transmission lines, or other works for the development and improvement of navigation and for the development and utilization of power across, along, from, or in navigable waters under part I of the Federal Power Act [16 U.S.C. 791a et seq.];

(B) the establishment, review, and enforcement of rates and charges for the transmission or sale of electric energy, including determinations on construction work in progress, under part II of the Federal Power Act [16 U.S.C. 824 et seq.], and the interconnection, under section 202(b), of such Act [16 U.S.C. 824a(b)], of facilities for the generation, transmission, and sale of electric energy (other than emergency interconnection);

(C) the establishment, review, and enforcement of rates and charges for the transportation and sale of natural gas by a producer or gatherer or by a natural gas pipeline or natural gas company under sections 1, 4, 5, and 6 of the Natural Gas Act [15 U.S.C. 717, 717c to 717e];

(D) the issuance of a certificate of public convenience and necessity, including abandonment of facilities or services, and the establishment of physical connections under section 7 of the Natural Gas Act [15 U.S.C. 717f];

(E) the establishment, review, and enforcement of curtailments, other than the establishment and review of priorities for such curtailments, under the Natural Gas Act [15 U.S.C. 717 et seq.]; and

(F) the regulation of mergers and securities acquisition under the Federal Power Act [16 U.S.C. 791a et seq.] and Natural Gas Act [15 U.S.C. 717 et seq.].

(2) The Commission may exercise any power under the following sections to the extent the Commission determines such power to be necessary to the exercise of any function within the jurisdiction of the Commission:

(A) sections 4, 301, 302, 306 through 309, and 312 through 316 of the Federal Power Act [16 U.S.C. 797, 825, 825a, 825e to 825h, 825k to 825*o*]; and

(B) sections 8, 9, 13 through 17, 20, and 21 of the Natural Gas Act [15 U.S.C. 717g, 717h, 717*l* to 717p, 717s, 717t].

(b) Repealed. Pub. L. 103–272, § 7(b), July 5, 1994, 108 Stat. 1379

(c) Consideration of proposals made by Secretary to amend regulations issued under section 753 of title 15; exception

(1) Pursuant to the procedures specified in section 7174 of this title and except as provided in paragraph (2), the Commission shall have jurisdiction to consider any proposal by the Secretary to amend the regulation required to be issued under section 753(a)[1] of title 15 which is required by section 757 or 760a[1] of title 15 to be transmitted by the President to, and reviewed by, each House of Congress, under section 6421 of this title.

(2) In the event that the President determines that an emergency situation of overriding national importance exists and requires the expeditious promulgation of a rule described in paragraph (1), the President may direct the Secretary to assume sole jurisdiction over the promulgation of such rule, and such rule shall be transmitted by the President to, and reviewed by, each House of Congress under section 757 or 760a[1] of title 15, and section 6421 of this title.

(d) Matters involving agency determinations to be made on record after agency hearing

The Commission shall have jurisdiction to hear and determine any other matter arising under any other function of the Secretary—

(1) involving any agency determination required by law to be made on the record after an opportunity for an agency hearing; or

(2) involving any other agency determination which the Secretary determines shall be made on the record after an opportunity for an agency hearing,

except that nothing in this subsection shall require that functions under sections 6213 and 6214[1] of this title shall be within the jurisdiction of the Commission unless the Secretary assigns such a function to the Commission.

(e) Matters assigned by Secretary after public notice and matters referred under section 7174 of this title

In addition to the other provisions of this section, the Commission shall have jurisdiction

[1] See References in Text note below.

over any other matter which the Secretary may assign to the Commission after public notice, or which are required to be referred to the Commission pursuant to section 7174 of this title.

(f) Limitation

No function described in this section which regulates the exports or imports of natural gas or electricity shall be within the jurisdiction of the Commission unless the Secretary assigns such a function to the Commission.

(g) Final agency action

The decision of the Commission involving any function within its jurisdiction, other than action by it on a matter referred to it pursuant to section 7174 of this title, shall be final agency action within the meaning of section 704 of title 5 and shall not be subject to further review by the Secretary or any officer or employee of the Department.

(h) Rules, regulations, and statements of policy

The Commission is authorized to prescribe rules, regulations, and statements of policy of general applicability with respect to any function under the jurisdiction of the Commission pursuant to this section.

(Pub. L. 95–91, title IV, §402, Aug. 4, 1977, 91 Stat. 583; Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379.)

Editorial Notes

REFERENCES IN TEXT

The Federal Power Act, referred to in subsec. (a)(1)(A), (B), and (F), is act June 10, 1920, ch. 285, 41 Stat. 1063, as amended, which is classified generally to chapter 12 (§791a et seq.) of Title 16, Conservation. Parts I and II of the Federal Power Act are classified generally to subchapters I (§791a et seq.) and II (§824 et seq.), respectively, of chapter 12 of Title 16. For complete classification of this Act to the Code, see section 791a of Title 16 and Tables.

The Natural Gas Act, referred to in subsec. (a)(1)(E), (F), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§717 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 717w of Title 15 and Tables.

Sections 753, 757, and 760a of title 15, referred to in subsec. (c), were omitted from the Code pursuant to section 760g of Title 15, which provided for the expiration of the President's authority under those sections on Sept. 30, 1981.

Section 6214 of this title, referred to in subsec. (d), was repealed by Pub. L. 106–469, title I, §103(3), Nov. 9, 2000, 114 Stat. 2029.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–272 struck out subsec. (b) which read as follows: "There are transferred to, and vested in, the Commission all functions and authority of the Interstate Commerce Commission or any officer or component of such Commission where the regulatory function establishes rates or charges for the transportation of oil by pipeline or establishes the valuation of any such pipeline." See section 60502 of Title 49, Transportation.

Statutory Notes and Related Subsidiaries

OIL PIPELINE REGULATORY REFORM

Pub. L. 102–486, title XVIII, Oct. 24, 1992, 106 Stat. 3010, provided that:

"SEC. 1801. OIL PIPELINE RATEMAKING METHODOLOGY.

"(a) ESTABLISHMENT.—Not later than 1 year after the date of the enactment of this Act [Oct. 24, 1992], the Federal Energy Regulatory Commission shall issue a final rule which establishes a simplified and generally applicable ratemaking methodology for oil pipelines in accordance with section 1(5) of part I of the Interstate Commerce Act [former 49 U.S.C. 1(5)].

"(b) EFFECTIVE DATE.—The final rule to be issued under subsection (a) may not take effect before the 365th day following the date of the issuance of the rule.

"SEC. 1802. STREAMLINING OF COMMISSION PROCEDURES.

"(a) RULEMAKING.—Not later than 18 months after the date of the enactment of this Act [Oct. 24, 1992], the Commission shall issue a final rule to streamline procedures of the Commission relating to oil pipeline rates in order to avoid unnecessary regulatory costs and delays.

"(b) SCOPE OF RULEMAKING.—Issues to be considered in the rulemaking proceeding to be conducted under subsection (a) shall include the following:

"(1) Identification of information to be filed with an oil pipeline tariff and the availability to the public of any analysis of such tariff filing performed by the Commission or its staff.

"(2) Qualification for standing (including definitions of economic interest) of parties who protest oil pipeline tariff filings or file complaints thereto.

"(3) The level of specificity required for a protest or complaint and guidelines for Commission action on the portion of the tariff or rate filing subject to protest or complaint.

"(4) An opportunity for the oil pipeline to file a response for the record to an initial protest or complaint.

"(5) Identification of specific circumstances under which Commission staff may initiate a protest.

"(c) ADDITIONAL PROCEDURAL CHANGES.—In conducting the rulemaking proceeding to carry out subsection (a), the Commission shall identify and transmit to Congress any other procedural changes relating to oil pipeline rates which the Commission determines are necessary to avoid unnecessary regulatory costs and delays and for which additional legislative authority may be necessary.

"(d) WITHDRAWAL OF TARIFFS AND COMPLAINTS.—

"(1) WITHDRAWAL OF TARIFFS.—If an oil pipeline tariff which is filed under part I of the Interstate Commerce Act [former 49 U.S.C. 1 et seq.] and which is subject to investigation is withdrawn—

"(A) any proceeding with respect to such tariff shall be terminated;

"(B) the previous tariff rate shall be reinstated; and

"(C) any amounts collected under the withdrawn tariff rate which are in excess of the previous tariff rate shall be refunded.

"(2) WITHDRAWAL OF COMPLAINTS.—If a complaint which is filed under section 13 of the Interstate Commerce Act [former 49 U.S.C. 13] with respect to an oil pipeline tariff is withdrawn, any proceeding with respect to such complaint shall be terminated.

"(e) ALTERNATIVE DISPUTE RESOLUTION.—To the maximum extent practicable, the Commission shall establish appropriate alternative dispute resolution procedures, including required negotiations and voluntary arbitration, early in an oil pipeline rate proceeding as a method preferable to adjudication in resolving disputes relating to the rate. Any proposed rates derived from implementation of such procedures shall be considered by the Commission on an expedited basis for approval.

"SEC. 1803. PROTECTION OF CERTAIN EXISTING RATES.

"(a) RATES DEEMED JUST AND REASONABLE.—Except as provided in subsection (b)—

"(1) any rate in effect for the 365-day period ending on the date of the enactment of this Act [Oct. 24, 1992] shall be deemed to be just and reasonable (within the meaning of section 1(5) of the Interstate Commerce Act [former 49 U.S.C. 1(5)]); and

"(2) any rate in effect on the 365th day preceding the date of such enactment shall be deemed to be just and reasonable (within the meaning of such section 1(5)) regardless of whether or not, with respect to such rate, a new rate has been filed with the Commission during such 365-day period;

if the rate in effect, as described in paragraph (1) or (2), has not been subject to protest, investigation, or complaint during such 365-day period.

"(b) CHANGED CIRCUMSTANCES.—No person may file a complaint under section 13 of the Interstate Commerce Act [former 49 U.S.C. 13] against a rate deemed to be just and reasonable under subsection (a) unless—

"(1) evidence is presented to the Commission which establishes that a substantial change has occurred after the date of the enactment of this Act [Oct. 24, 1992]—

"(A) in the economic circumstances of the oil pipeline which were a basis for the rate; or

"(B) in the nature of the services provided which were a basis for the rate; or

"(2) the person filing the complaint was under a contractual prohibition against the filing of a complaint which was in effect on the date of enactment of this Act and had been in effect prior to January 1, 1991, provided that a complaint by a party bound by such prohibition is brought within 30 days after the expiration of such prohibition.

If the Commission determines pursuant to a proceeding instituted as a result of a complaint under section 13 of the Interstate Commerce Act that the rate is not just and reasonable, the rate shall not be deemed to be just and reasonable. Any tariff reduction or refunds that may result as an outcome of such a complaint shall be prospective from the date of the filing of the complaint.

"(c) LIMITATION REGARDING UNDULY DISCRIMINATORY OR PREFERENTIAL TARIFFS.—Nothing in this section shall prohibit any aggrieved person from filing a complaint under section 13 or section 15(1) of the Interstate Commerce Act [former 49 U.S.C. 13, 15(1)] challenging any tariff provision as unduly discriminatory or unduly preferential.

"SEC. 1804. DEFINITIONS.

"For the purposes of this title, the following definitions apply:

"(1) COMMISSION.—The term 'Commission' means the Federal Energy Regulatory Commission and, unless the context requires otherwise, includes the Oil Pipeline Board and any other office or component of the Commission to which the functions and authority vested in the Commission under section 402(b) of the Department of Energy Organization Act (42 U.S.C. 7172(b)) are delegated.

"(2) OIL PIPELINE.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'oil pipeline' means any common carrier (within the meaning of the Interstate Commerce Act [former 49 U.S.C. 1 et seq.]) which transports oil by pipeline subject to the functions and authority vested in the Commission under section 402(b) of the Department of Energy Organization Act (42 U.S.C. 7172(b)).

"(B) EXCEPTION.—The term 'oil pipeline' does not include the Trans-Alaska Pipeline authorized by the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.) or any pipeline delivering oil directly or indirectly to the Trans-Alaska Pipeline.

"(3) OIL.—The term 'oil' has the same meaning as is given such term for purposes of the transfer of functions from the Interstate Commerce Commission to the Federal Energy Regulatory Commission under section 402(b) of the Department of Energy Organization Act (42 U.S.C. 7172(b)).

"(4) RATE.—The term 'rate' means all charges that an oil pipeline requires shippers to pay for transportation services."

§ 7173. Initiation of rulemaking procedures before Commission

(a) Proposal of rules, regulations, and statements of policy of general applicability by Secretary and Commission

The Secretary and the Commission are authorized to propose rules, regulations, and statements of policy of general applicability with respect to any function within the jurisdiction of the Commission under section 7172 of this title.

(b) Consideration and final action on proposals of Secretary

The Commission shall have exclusive jurisdiction with respect to any proposal made under subsection (a), and shall consider and take final action on any proposal made by the Secretary under such subsection in an expeditious manner in accordance with such reasonable time limits as may be set by the Secretary for the completion of action by the Commission on any such proposal.

(c) Utilization of rulemaking procedures for establishment of rates and charges under Federal Power Act and Natural Gas Act

Any function described in section 7172 of this title which relates to the establishment of rates and charges under the Federal Power Act [16 U.S.C. 791a et seq.] or the Natural Gas Act [15 U.S.C. 717 et seq.], may be conducted by rulemaking procedures. Except as provided in subsection (d), the procedures in such a rulemaking proceeding shall assure full consideration of the issues and an opportunity for interested persons to present their views.

(d) Submission of written questions by interested persons

With respect to any rule or regulation promulgated by the Commission to establish rates and charges for the first sale of natural gas by a producer or gatherer to a natural gas pipeline under the Natural Gas Act [15 U.S.C. 717 et seq.], the Commission may afford any interested person a reasonable opportunity to submit written questions with respect to disputed issues of fact to other interested persons participating in the rulemaking proceedings. The Commission may establish a reasonable time for both the submission of questions and responses thereto.

(Pub. L. 95–91, title IV, § 403, Aug. 4, 1977, 91 Stat. 585.)

Editorial Notes

REFERENCES IN TEXT

The Federal Power Act, referred to in subsec. (c), is act June 10, 1920, ch. 285, 41 Stat. 1063, as amended, which is classified generally to chapter 12 (§ 791a et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see section 791a of Title 16 and Tables.

The Natural Gas Act, referred to in subsecs. (c) and (d), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§ 717 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 717w of Title 15 and Tables.

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§ 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) 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) 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 standard for nitrogen dioxide

The Administrator shall, not later than one year after August 7, 1977, promulgate a national primary ambient air quality standard for NO_2 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.)

Editorial Notes

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).

Statutory Notes and Related Subsidiaries

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 Employees.

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 comment on the proposed report. The Administrator shall include in the final report a summary of the comments received on the proposed report.

''(3) There are authorized to be appropriated such sums as are necessary to carry out this section.''

§ 7410. State implementation plans for national primary and secondary ambient air quality standards

(a) Adoption of plan by State; submission to Administrator; content of plan; revision; new sources; indirect source review program; supplemental or intermittent control systems

(1) Each State shall, after reasonable notice and public hearings, adopt and submit to the Administrator, within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof) under section 7409 of this title for any air pollutant, a plan which provides for implementation, maintenance, and enforcement of such primary standard in each air quality control region (or portion thereof) within such State. In addition, such State shall adopt and submit to the Administrator (either as a part of a plan submitted under the preceding sentence or separately) within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national ambient air quality secondary standard (or revision thereof), a plan which provides for implementation, maintenance, and enforcement of such secondary standard in each air quality control region (or portion thereof) within such State. Unless a separate public hearing is provided, each State shall consider its plan implementing such secondary standard at the hearing required by the first sentence of this paragraph.

(2) Each implementation plan submitted by a State under this chapter shall be adopted by the State after reasonable notice and public hearing. Each such plan shall—

(A) include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this chapter;

(B) provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to—

(i) monitor, compile, and analyze data on ambient air quality, and

(ii) upon request, make such data available to the Administrator;

(C) include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D;

(D) contain adequate provisions—

(i) prohibiting, consistent with the provisions of this subchapter, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will—

(I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, or

(II) interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility,

(ii) insuring compliance with the applicable requirements of sections 7426 and 7415 of this title (relating to interstate and international pollution abatement);

(E) provide (i) necessary assurances that the State (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional

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4342. Establishment; membership; Chairman; appointments.
4343. Employment of personnel, experts and consultants.
4344. Duties and functions.
4345. Consultation with Citizens' Advisory Committee on Environmental Quality and other representatives.
4346. Tenure and compensation of members.
4346a. Travel reimbursement by private organizations and Federal, State, and local governments.
4346b. Expenditures in support of international activities.
4347. Authorization of appropriations.

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4361, 4361a. Repealed.
4361b. Implementation by Administrator of Environmental Protection Agency of recommendations of "CHESS" Investigative Report; waiver; inclusion of status of implementation requirements in annual revisions of plan for research, development, and demonstration.
4361c. Staff management.
4362. Interagency cooperation on prevention of environmental cancer and heart and lung disease.
4362a. Membership of Task Force on Environmental Cancer and Heart and Lung Disease.
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4365. Science Advisory Board.
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4370a. Assistant Administrators of Environmental Protection Agency; appointment; duties.
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4370m–4. Coordination of required reviews.
4370m–5. Delegated State permitting programs.
4370m–6. Litigation, judicial review, and savings provision.
4370m–7. Reports.
4370m–8. Funding for governance, oversight, and processing of environmental reviews and permits.
4370m–9. Application.
4370m–10. GAO report.
4370m–11. Savings provision.
4370m–12. Repealed.

§ 4321. Congressional declaration of purpose

The purposes of this chapter are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

(Pub. L. 91–190, § 2, Jan. 1, 1970, 83 Stat. 852.)

Statutory Notes and Related Subsidiaries

Short Title of 2020 Amendment

Pub. L. 116–260, div. S, § 102(a), Dec. 27, 2020, 134 Stat. 2243, provided that: "This section [enacting section 16298 of this title, amending sections 4370m and 7403 of this title, and enacting provisions set out as a note under section 4370m of this title] may be cited as the 'Utilizing Significant Emissions with Innovative Technologies Act' or the 'USE IT Act'."

Short Title

Pub. L. 91–190, § 1, Jan. 1, 1970, 83 Stat. 852, provided: "That this Act [enacting this chapter] may be cited as the 'National Environmental Policy Act of 1969'."

Environmental Protection Agency Headquarters

Pub. L. 112–237, § 2, Dec. 28, 2012, 126 Stat. 1628, provided that:

"(a) *Redesignation*.—The Environmental Protection Agency Headquarters located at 1200 Pennsylvania Avenue N.W. in Washington, D.C., known as the Ariel Rios Building, shall be known and redesignated as the 'William Jefferson Clinton Federal Building'.

"(b) *References*.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the Environmental Protection Agency Headquarters referred to in subsection (a) shall be deemed to be a reference to the 'William Jefferson Clinton Federal Building'."

Modification or Replacement of Executive Order No. 13423

Pub. L. 111–117, div. C, title VII, § 742(b), Dec. 16, 2009, 123 Stat. 3216, provided that: "Hereafter, the President may modify or replace Executive Order No. 13423 [formerly set out below] if the President determines that a revised or new executive order will achieve equal or better environmental or energy efficiency results."

[Pursuant to section 742(b) of Pub. L. 111–117, set out above, Ex. Ord. No. 13423 was replaced by Ex. Ord. No. 13693, Mar. 19, 2015, 80 F.R. 15871, formerly set out below.]

Pub. L. 111–8, div. D, title VII, § 748, Mar. 11, 2009, 123 Stat. 693, which provided that Ex. Ord. No. 13423 (formerly set out below) would remain in effect on and after Mar. 11, 2009, except as otherwise provided by law

after Mar. 11, 2009, was repealed by Pub. L. 111–117, div. C, title VII, § 742(a), Dec. 16, 2009, 123 Stat. 3216.

NECESSITY OF MILITARY LOW-LEVEL FLIGHT TRAINING TO PROTECT NATIONAL SECURITY AND ENHANCE MILITARY READINESS

Pub. L. 106–398, § 1 [[div. A], title III, § 317], Oct. 30, 2000, 114 Stat. 1654, 1654A–57, provided that: ''Nothing in the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) or the regulations implementing such law shall require the Secretary of Defense or the Secretary of a military department to prepare a programmatic, nation-wide environmental impact statement for low-level flight training as a precondition to the use by the Armed Forces of an airspace for the performance of low-level training flights.''

POLLUTION PROSECUTION

Pub. L. 101–593, title II, Nov. 16, 1990, 104 Stat. 2962, provided that:

''SEC. 201. SHORT TITLE.

''This title may be cited as the 'Pollution Prosecution Act of 1990'.

''SEC. 202. EPA OFFICE OF CRIMINAL INVESTIGATION.

''(a) The Administrator of the Environmental Protection Agency (hereinafter referred to as the 'Administrator') shall increase the number of criminal investigators assigned to the Office of Criminal Investigations by such numbers as may be necessary to assure that the number of criminal investigators assigned to the office—

''(1) for the period October 1, 1991, through September 30, 1992, is not less than 72;

''(2) for the period October 1, 1992, through September 30, 1993, is not less than 110;

''(3) for the period October 1, 1993, through September 30, 1994, is not less than 123;

''(4) for the period October 1, 1994, through September 30, 1995, is not less than 160;

''(5) beginning October 1, 1995, is not less than 200.

''(b) For fiscal year 1991 and in each of the following 4 fiscal years, the Administrator shall, during each such fiscal year, provide increasing numbers of additional support staff to the Office of Criminal Investigations.

''(c) The head of the Office of Criminal Investigations shall be a position in the competitive service as defined in 2102 of title 5 U.S.C. or a career reserve [reserved] position as defined in 3132(A) [3132(a)] of title 5 U.S.C. and the head of such office shall report directly, without intervening review or approval, to the Assistant Administrator for Enforcement.

''SEC. 203. CIVIL INVESTIGATORS.

''The Administrator, as soon as practicable following the date of the enactment of this Act [Nov. 16, 1990], but no later than September 30, 1991, shall increase by fifty the number of civil investigators assigned to assist the Office of Enforcement in developing and prosecuting civil and administrative actions and carrying out its other functions.

''SEC. 204. NATIONAL TRAINING INSTITUTE.

''The Administrator shall, as soon as practicable but no later than September 30, 1991 establish within the Office of Enforcement the National Enforcement Training Institute. It shall be the function of the Institute, among others, to train Federal, State, and local lawyers, inspectors, civil and criminal investigators, and technical experts in the enforcement of the Nation's environmental laws.

''SEC. 205. AUTHORIZATION.

''For the purposes of carrying out the provisions of this Act [probably should be ''this title''], there is authorized to be appropriated to the Environmental Protection Agency $13,000,000 for fiscal year 1991, $18,000,000 for fiscal year 1992, $20,000,000 for fiscal year 1993, $26,000,000 for fiscal year 1994, and $33,000,000 for fiscal year 1995.''

Executive Documents

TRANSFER OF FUNCTIONS

Enforcement functions of Secretary or other official in Department of the Interior related to compliance with system activities requiring coordination and approval under this chapter, and enforcement functions of Secretary or other official in Department of Agriculture, insofar as they involve lands and programs under jurisdiction of that Department, related to compliance with this chapter 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(e), (f), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in the Appendix to Title 5, Government Organization and Employees. 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 Title 15, Commerce and Trade. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of Title 15.

EMERGENCY PREPAREDNESS FUNCTIONS

For assignment of certain emergency preparedness functions to Administrator of Environmental Protection Agency, see Parts 1, 2, and 16 of Ex. Ord. No. 12656, Nov. 18, 1988, 53 F.R. 47491, set out as a note under section 5195 of this title.

REORGANIZATION PLAN NO. 3 OF 1970

Eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. 2086, as amended Pub. L. 98–80, § 2(a)(2), (b)(2), (c)(2)(C), Aug. 23, 1983, 97 Stat. 485, 486

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, July 9, 1970, pursuant to the provisions of Chapter 9 of Title 5 of the United States Code.

ENVIRONMENTAL PROTECTION AGENCY

SECTION 1. ESTABLISHMENT OF AGENCY

(a) There is hereby established the Environmental Protection Agency, hereinafter referred to as the ''Agency.''

(b) There shall be at the head of the Agency the Administrator of the Environmental Protection Agency, hereinafter referred to as the ''Administrator.'' The Administrator shall be appointed by the President, by and with the advice and consent of the Senate.

(c) There shall be in the Agency a Deputy Administrator of the Environmental Protection Agency who shall be appointed by the President, by and with the advice and consent of the Senate. The Deputy Administrator shall perform such functions as the Administrator shall from time to time assign or delegate, and shall act as Administrator during the absence or disability of the Administrator or in the event of a vacancy in the office of Administrator.

(d) There shall be in the Agency not to exceed five Assistant Administrators of the Environmental Protection Agency who shall be appointed by the President, by and with the advice and consent of the Senate. Each Assistant Administrator shall perform such functions as the Administrator shall from time to time assign or delegate. [As amended Pub. L. 98–80, § 2(a)(2), (b)(2), (c)(2)(C), Aug. 23, 1983, 97 Stat. 485, 486.]

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able 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.

J.R. BIDEN, JR.

SUBCHAPTER I—POLICIES AND GOALS

§ 4331. Congressional declaration of national environmental policy

(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this chapter, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may—

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

(Pub. L. 91–190, title I, § 101, Jan. 1, 1970, 83 Stat. 852.)

Statutory Notes and Related Subsidiaries

COMMISSION ON POPULATION GROWTH AND THE AMERICAN FUTURE

Pub. L. 91–213, §§ 1–9, Mar. 16, 1970, 84 Stat. 67–69, established the Commission on Population Growth and the American Future to conduct and sponsor such studies and research and make such recommendations as might be necessary to provide information and education to all levels of government in the United States, and to our people regarding a broad range of problems associated with population growth and their implications for America's future; prescribed the composition of the Commission; provided for the appointment of its members, and the designation of a Chairman and Vice Chairman; required a majority of the members of the Commission to constitute a quorum, but allowed a lesser number to conduct hearings; prescribed the compensation of members of the Commission; required the Commission to conduct an inquiry into certain prescribed aspects of population growth in the United States and its foreseeable social consequences; provided for the appointment of an Executive Director and other personnel and prescribed their compensation; authorized the Commission to enter into contracts with public agencies, private firms, institutions, and individuals for the conduct of research and surveys, the preparation of reports, and other activities necessary to the discharge of its duties, and to request from any Federal department or agency any information and assistance it deems necessary to carry out its functions; required the General Services Administration to provide administrative services for the Commission on a reimbursable basis; required the Commission to submit an interim report to the President and the Congress one year after it was established and to submit its final report two years after Mar. 16, 1970; terminated the Commission sixty days after the date of the submission of its final report; and authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such amounts as might be necessary to carry out the provisions of Pub. L. 91–213.

Executive Documents

EXECUTIVE ORDER NO. 11507

Ex. Ord. No. 11507, eff. Feb. 4, 1970, 35 F.R. 2573, which related to prevention, control, and abatement of air and water pollution at federal facilities was superseded by Ex. Ord. No. 11752, eff. Dec. 17, 1973, 38 F.R. 34793, formerly set out below.

EXECUTIVE ORDER NO. 11752

Ex. Ord. No. 11752, Dec. 17, 1973, 38 F.R. 34793, which related to the prevention, control, and abatement of environmental pollution at Federal facilities, was revoked by Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, set out as a note under section 4321 of this title.

§ 4332. Cooperation of agencies; reports; availability of information; recommendations; international and national coordination of efforts

The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this chapter, and (2) all agencies of the Federal Government shall—

(A) 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;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by subchapter II of this chapter, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, and shall accompany the proposal through the existing agency review processes;

(D) Any detailed statement required under subparagraph (C) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official, if:

(i) the State agency or official has statewide jurisdiction and has the responsibility for such action,

(ii) the responsible Federal official furnishes guidance and participates in such preparation,

(iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and

(iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this chapter; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.[1]

(E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(F) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(G) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(H) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(I) assist the Council on Environmental Quality established by subchapter II of this chapter.

(Pub. L. 91–190, title I, §102, Jan. 1, 1970, 83 Stat. 853; Pub. L. 94–83, Aug. 9, 1975, 89 Stat. 424.)

Editorial Notes

AMENDMENTS

1975—Par. (2)(D) to (I). Pub. L. 94–83 added subpar. (D) and redesignated former subpars. (D) to (H) as (E) to (I), respectively.

Statutory Notes and Related Subsidiaries

CERTAIN COMMERCIAL SPACE LAUNCH ACTIVITIES

Pub. L. 104–88, title IV, §401, Dec. 29, 1995, 109 Stat. 955, provided that: ''The licensing of a launch vehicle or launch site operator (including any amendment, extension, or renewal of the license) under [former] chapter 701 of title 49, United States Code [now chapter 509 (§50901 et seq.) of Title 51, National and Commercial Space Programs], shall not be considered a major Federal action for purposes of section 102(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)) if—

''(1) the Department of the Army has issued a permit for the activity; and

''(2) the Army Corps of Engineers has found that the activity has no significant impact.''

Executive Documents

EX. ORD. NO. 13352. FACILITATION OF COOPERATIVE CONSERVATION

Ex. Ord. No. 13352, Aug. 26, 2004, 69 F.R. 52989, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

SECTION 1. *Purpose*. The purpose of this order is to ensure that the Departments of the Interior, Agriculture, Commerce, and Defense and the Environmental Protection Agency implement laws relating to the environ-

[1] So in original. The period probably should be a semicolon.

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ment and natural resources in a manner that promotes cooperative conservation, with an emphasis on appropriate inclusion of local participation in Federal decisionmaking, in accordance with their respective agency missions, policies, and regulations.

SEC. 2. *Definition*. As used in this order, the term ''cooperative conservation'' means actions that relate to use, enhancement, and enjoyment of natural resources, protection of the environment, or both, and that involve collaborative activity among Federal, State, local, and tribal governments, private for-profit and nonprofit institutions, other nongovernmental entities and individuals.

SEC. 3. *Federal Activities*. To carry out the purpose of this order, the Secretaries of the Interior, Agriculture, Commerce, and Defense and the Administrator of the Environmental Protection Agency shall, to the extent permitted by law and subject to the availability of appropriations and in coordination with each other as appropriate:

(a) carry out the programs, projects, and activities of the agency that they respectively head that implement laws relating to the environment and natural resources in a manner that:

(i) facilitates cooperative conservation;

(ii) takes appropriate account of and respects the interests of persons with ownership or other legally recognized interests in land and other natural resources;

(iii) properly accommodates local participation in Federal decisionmaking; and

(iv) provides that the programs, projects, and activities are consistent with protecting public health and safety;

(b) report annually to the Chairman of the Council on Environmental Quality on actions taken to implement this order; and

(c) provide funding to the Office of Environmental Quality Management Fund (42 U.S.C. 4375) for the Conference for which section 4 of this order provides.

SEC. 4. *White House Conference on Cooperative Conservation*. The Chairman of the Council on Environmental Quality shall, to the extent permitted by law and subject to the availability of appropriations:

(a) convene not later than 1 year after the date of this order, and thereafter at such times as the Chairman deems appropriate, a White House Conference on Cooperative Conservation (Conference) to facilitate the exchange of information and advice relating to (i) cooperative conservation and (ii) means for achievement of the purpose of this order; and

(b) ensure that the Conference obtains information in a manner that seeks from Conference participants their individual advice and does not involve collective judgment or consensus advice or deliberation.

SEC. 5. *General Provision*. This order 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, instrumentalities or entities, its officers, employees or agents, or any other person.

GEORGE W. BUSH.

§ 4332a. Repealed. Pub. L. 114–94, div. A, title I, § 1304(j)(2), Dec. 4, 2015, 129 Stat. 1386

Section, Pub. L. 112–141, div. A, title I, § 1319, July 6, 2012, 126 Stat. 551, related to accelerated decisionmaking in environmental reviews.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 2015, see section 1003 of Pub. L. 114–94, set out as an Effective Date of 2015 Amendment note under section 5313 of Title 5, Government Organization and Employees.

§ 4333. Conformity of administrative procedures to national environmental policy

All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this chapter and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this chapter.

(Pub. L. 91–190, title I, § 103, Jan. 1, 1970, 83 Stat. 854.)

§ 4334. Other statutory obligations of agencies

Nothing in section 4332 or 4333 of this title shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.

(Pub. L. 91–190, title I, § 104, Jan. 1, 1970, 83 Stat. 854.)

§ 4335. Efforts supplemental to existing authorizations

The policies and goals set forth in this chapter are supplementary to those set forth in existing authorizations of Federal agencies.

(Pub. L. 91–190, title I, § 105, Jan. 1, 1970, 83 Stat. 854.)

SUBCHAPTER II—COUNCIL ON ENVIRONMENTAL QUALITY

§ 4341. Omitted

Editorial Notes

CODIFICATION

Section, Pub. L. 91–190, title II, § 201, Jan. 1, 1970, 83 Stat. 854, which required the President to transmit to Congress annually an Environmental Quality Report, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, item 1 on page 41 of House Document No. 103–7.

§ 4342. Establishment; membership; Chairman; appointments

There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the ''Council''). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and

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United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 55. National Environmental Policy (Refs & Annos)
Subchapter I. Policies and Goals (Refs & Annos)

42 U.S.C.A. § 4336

§ 4336. Procedure for determination of level of review

Effective: June 3, 2023
Currentness

(a) Threshold determinations

An agency is not required to prepare an environmental document with respect to a proposed agency action if--

(1) the proposed agency action is not a final agency action within the meaning of such term in chapter 5 of Title 5;

(2) the proposed agency action is excluded pursuant to one of the agency's categorical exclusions, another agency's categorical exclusions consistent with section 4336c of this title, or another provision of law;

(3) the preparation of such document would clearly and fundamentally conflict with the requirements of another provision of law; or

(4) the proposed agency action is a nondiscretionary action with respect to which such agency does not have authority to take environmental factors into consideration in determining whether to take the proposed action.

(b) Levels of review

(1) Environmental impact statement

An agency shall issue an environmental impact statement with respect to a proposed agency action requiring an environmental document that has a reasonably foreseeable significant effect on the quality of the human environment.

(2) Environmental assessment

An agency shall prepare an environmental assessment with respect to a proposed agency action that does not have a reasonably foreseeable significant effect on the quality of the human environment, or if the significance of such effect is unknown, unless the agency finds that the proposed agency action is excluded pursuant to one of the agency's categorical exclusions, another agency's categorical exclusions consistent with section 4336c of this title, or another provision of law. Such environmental assessment shall be a concise public document prepared by a Federal agency to set forth the basis of such agency's finding of no significant impact or determination that an environmental impact statement is necessary.

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(3) Sources of information

In making a determination under this subsection, an agency--

(A) may make use of any reliable data source; and

(B) is not required to undertake new scientific or technical research unless the new scientific or technical research is essential to a reasoned choice among alternatives, and the overall costs and time frame of obtaining it are not unreasonable.

CREDIT(S)

(Pub.L. 91-190, Title I, § 106, as added Pub.L. 118-5, Div. C, Title III, § 321(b), June 3, 2023, 137 Stat. 39.)

42 U.S.C.A. § 4336, 42 USCA § 4336
Current through P.L.118-13. Some statute sections may be more current, see credits for details.

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

The Secretary of the Interior, in carrying out the Act of February 22, 1935, as amended (15 U.S.C., ch. 15A), is authorized to cooperate with Federal and State authorities.

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

Editorial Notes

References in Text

Act of February 22, 1935, referred to in text, is act Feb. 22, 1935, ch. 18, 49 Stat. 30, popularly known as the ''Hot Oil Act'' and also as the ''Connally Hot Oil Act'', which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 715 of this title and Tables.

Codification

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

Executive Documents

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.
717a.	Definitions.
717b.	Exportation or importation of natural gas; LNG terminals.
717b–1.	State and local safety considerations.
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717c–1.	Prohibition on market manipulation.
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717k.	Officials dealing in securities.
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717w.	Short title.
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.)

Editorial Notes

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).

Statutory Notes and Related Subsidiaries

TERMINATION OF FEDERAL POWER COMMISSION; TRANSFER OF FUNCTIONS

The Federal Power Commission was terminated, and its functions, personnel, property, funds, etc., were transferred to Secretary of Energy (except for certain functions which were transferred to the 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 Documents

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.)

Editorial Notes

AMENDMENTS

2005—Par. (11). Pub. L. 109–58 added par. (11).

1992—Par. (10). Pub. L. 102–486 added par. (10).

Statutory Notes and Related Subsidiaries

TERMINATION OF FEDERAL POWER COMMISSION; TRANSFER OF FUNCTIONS

The Federal Power Commission was terminated, and its functions, personnel, property, funds, etc., were transferred to the Secretary of Energy (except for cer-

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tain functions which were transferred to the 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 find[1] necessary or appropriate.

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

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

(ii) condition an order on—

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

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

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

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

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

(f) Military installations

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

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

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

(2) The Commission shall enter into a memorandum of understanding with the Secretary of Defense for the purpose of ensuring that the

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

Commission coordinate and consult[2] with the Secretary of Defense on the siting, construction, expansion, or operation of liquefied natural gas facilities that may affect an active military installation.

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

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

Editorial Notes

REFERENCES IN TEXT

The Coastal Zone Management Act of 1972, referred to in subsec. (d)(1), is title III of Pub. L. 89–454 as added by Pub. L. 92–583, Oct. 27, 1972, 86 Stat. 1280, as amended, which is classified generally to chapter 33 (§ 1451 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1451 of Title 16 and Tables.

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

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

AMENDMENTS

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

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

1992—Pub. L. 102–486 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

Executive Documents

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 authorizations for importation of natural gas from Alberta as pre-deliveries of Alaskan gas issued under this section with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to the 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.

DELEGATION OF FUNCTIONS

Functions of President respecting certain facilities constructed and maintained on United States borders delegated to Secretary of State, see Ex. Ord. No. 11423, Aug. 16, 1968, 33 F.R. 11741, set out as a note under section 301 of Title 3, The President.

EX. ORD. NO. 10485. PROVIDING FOR THE PERFORMANCE OF CERTAIN FUNCTIONS HERETOFORE PERFORMED BY THE PRESIDENT WITH RESPECT TO ELECTRIC POWER AND NATURAL GAS FACILITIES LOCATED ON THE BORDERS OF THE UNITED STATES

Ex. Ord. No. 10485. Sept. 3, 1953, 18 F.R. 5397, as amended by Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957, provided:

SECTION 1. (a) The Secretary of Energy is hereby designated and empowered to perform the following-described functions:

(1) To receive all applications for permits for the construction, operation, maintenance, or connection, at the borders of the United States, of facilities for the transmission of electric energy between the United States and a foreign country.

(2) To receive all applications for permits for the construction, operation, maintenance, or connection, at the borders of the United States, of facilities for the exportation or importation of natural gas to or from a foreign country.

(3) Upon finding the issuance of the permit to be consistent with the public interest, and, after obtaining the favorable recommendations of the Secretary of State and the Secretary of Defense thereon, to issue to the applicant, as appropriate, a permit for such construction, operation, maintenance, or connection. The Secretary of Energy shall have the power to attach to the issuance of the permit and to the exercise of the rights granted thereunder such conditions as the public interest may in its judgment require.

(b) In any case wherein the Secretary of Energy, the Secretary of State, and the Secretary of Defense cannot agree as to whether or not a permit should be issued, the Secretary of Energy shall submit to the President for approval or disapproval the application for a permit with the respective views of the Secretary of Energy, the Secretary of State and the Secretary of Defense.

SEC. 2. [Deleted.]

SEC. 3. The Secretary of Energy is authorized to issue such rules and regulations, and to prescribe such procedures, as it may from time to time deem necessary or desirable for the exercise of the authority delegated to it by this order.

SEC. 4. All Presidential Permits heretofore issued pursuant to Executive Order No. 8202 of July 13, 1939, and in force at the time of the issuance of this order, and all permits issued hereunder, shall remain in full force and effect until modified or revoked by the President or by the Secretary of Energy.

SEC. 5. Executive Order No. 8202 of July 13, 1939, is hereby revoked.

§ 717b–1. State and local safety considerations

(a) Promulgation of regulations

The Commission shall promulgate regulations on the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) pre-filing process within 60 days after August 8, 2005. An applicant shall comply with pre-filing process required under the National Environmental Policy Act of 1969 prior to filing an application with the Commission. The regulations shall require that the pre-filing process commence at least 6 months prior to the filing of an application for author-

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

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section shall be construed to create a private right of action.

(June 21, 1938, ch. 556, §4A, as added Pub. L. 109–58, title III, §315, Aug. 8, 2005, 119 Stat. 691.)

§ 717d. Fixing rates and charges; determination of cost of production or transportation

(a) Decreases in rates

Whenever the Commission, after a hearing had upon its own motion or upon complaint of any State, municipality, State commission, or gas distributing company, shall find that any rate, charge, or classification demanded, observed, charged, or collected by any natural-gas company in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory, or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order: *Provided, however*, That the Commission shall have no power to order any increase in any rate contained in the currently effective schedule of such natural gas company on file with the Commission, unless such increase is in accordance 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 jurisdiction of the Commission, or any service rendered by means of such facilities, without the permission and approval of the Commission first had and obtained, after due hearing, and a finding by the Commission that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience or necessity permit such abandonment.

(c) Certificate of public convenience and necessity

(1)(A) No natural-gas company or person which will be a natural-gas company upon completion of any proposed construction or extension shall engage in the transportation or sale of natural gas, subject to the jurisdiction of the Commission, or undertake the construction or extension of any facilities therefor, or acquire or operate any such facilities or extensions thereof, unless there is in force with respect to such natural-gas company a certificate of public convenience and necessity issued by the Commission authorizing such acts or operations: *Provided, however*, That if any such natural-gas company or predecessor in interest was bona fide engaged in transportation or sale of natural gas, subject to the jurisdiction of the Commission, on February 7, 1942, over the route or routes or within the area for which application is made and has so operated since that time, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission within ninety days after February 7, 1942. Pending the determination of any such application, the continuance of such operation shall be lawful.

(B) In all other cases the Commission shall set the matter for hearing and shall give such reasonable notice of the hearing thereon to all interested persons as in its judgment may be necessary under rules and regulations to be prescribed by the Commission; and the application shall be decided in accordance with the procedure provided in subsection (e) of this section and such certificate shall be issued or denied accordingly: *Provided, however*, That the Commission may issue a temporary certificate in cases of emergency, to assure maintenance of adequate service or to serve particular customers, without notice or hearing, pending the determination of an application for a certificate, and may by regulation exempt from the requirements of this section temporary acts or operations for which the issuance of a certificate will not be required in the public interest.

(2) The Commission may issue a certificate of public convenience and necessity to a natural-gas company for the transportation in interstate commerce of natural gas used by any person for one or more high-priority uses, as defined, by rule, by the Commission, in the case of—

(A) natural gas sold by the producer to such person; and

(B) natural gas produced by such person.

(d) Application for certificate of public convenience and necessity

Application for certificates shall be made in writing to the Commission, be verified under oath, and shall be in such form, contain such information, and notice thereof shall be served upon such interested parties and in such manner as the Commission shall, by regulation, require.

(e) Granting of certificate of public convenience and necessity

Except in the cases governed by the provisos contained in subsection (c)(1) of this section, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operation, sale, service, construction, extension, or acquisition covered by the application, if it is found that the applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of this chapter and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, sale, operation, construction, extension, or acquisition, to the extent authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied. The Commission shall have the power to attach to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require.

(f) Determination of service area; jurisdiction of transportation to ultimate consumers

(1) The Commission, after a hearing had upon its own motion or upon application, may determine the service area to which each authorization under this section is to be limited. Within such service area as determined by the Commission a natural-gas company may enlarge or extend its facilities for the purpose of supplying increased market demands in such service area without further authorization; and

(2) If the Commission has determined a service area pursuant to this subsection, transportation to ultimate consumers in such service area by the holder of such service area determination, even if across State lines, shall be subject to the exclusive jurisdiction of the State commission in the State in which the gas is consumed. This section shall not apply to the transportation of natural gas to another natural gas company.

(g) Certificate of public convenience and necessity for service of area already being served

Nothing contained in this section shall be construed as a limitation upon the power of the Commission to grant certificates of public convenience and necessity for service of an area already being served by another natural-gas company.

(h) Right of eminent domain for construction of pipelines, etc.

When any holder of a certificate of public convenience and necessity cannot acquire by contract, or is unable to agree with the owner of property to the compensation to be paid for, the necessary right-of-way to construct, operate, and maintain a pipe line or pipe lines for the transportation of natural gas, and the necessary land or other property, in addition to right-of-way, for the location of compressor stations, pressure apparatus, or other stations or equipment necessary to the proper operation of such pipe line or pipe lines, it may acquire the same by the exercise of the right of eminent domain in the district court of the United States for the district in which such property may be located, or in the State courts. The practice and procedure in any action or proceeding for that purpose in the district court of the United States shall conform as nearly as may be with the practice and procedure in similar action or proceeding in the courts of the State where the property is situated: *Provided*, That the United States district courts shall only have jurisdiction of cases when the amount claimed by the owner of the property to be condemned exceeds $3,000.

(June 21, 1938, ch. 556, §7, 52 Stat. 824; Feb. 7, 1942, ch. 49, 56 Stat. 83; July 25, 1947, ch. 333, 61 Stat. 459; Pub. L. 95–617, title VI, §608, Nov. 9, 1978, 92 Stat. 3173; Pub. L. 100–474, §2, Oct. 6, 1988, 102 Stat. 2302.)

Editorial Notes

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).

Statutory Notes and Related Subsidiaries

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 sec-

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tion 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].''

Executive Documents

TRANSFER OF FUNCTIONS

Enforcement functions of Secretary or other official in Department of Energy and Commission, Commissioners, or other official in Federal Energy Regulatory Commission related to compliance with certificates of public convenience and necessity issued under this section with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§ 102(d), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out under section 719e of this title. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102–486, set out as an Abolition of Office of Federal Inspector note under section 719e of this title. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of this title.

§ 717g. Accounts; records; memoranda

(a) Rules and regulations for keeping and preserving accounts, records, etc.

Every natural-gas company shall make, keep, and preserve for such periods, such accounts, records of cost-accounting procedures, correspondence, memoranda, papers, books, and other records as the Commission may by rules and regulations prescribe as necessary or appropriate for purposes of the administration of this chapter: *Provided, however*, That nothing in this chapter shall relieve any such natural-gas company from keeping any accounts, memoranda, or records which such natural-gas company may be required to keep by or under authority of the laws of any State. The Commission may prescribe a system of accounts to be kept by such natural-gas companies, and may classify such natural-gas companies and prescribe a system of accounts for each class. The Commission, after notice and opportunity for hearing, may determine by order the accounts in which particular outlays or receipts shall be entered, charged, or credited. The burden of proof to justify every accounting entry questioned by the Commission shall be on the person making, authorizing, or requiring such entry, and the Commission may suspend a charge or credit pending submission of satisfactory proof in support thereof.

(b) Access to and inspection of accounts and records

The Commission shall at all times have access to and the right to inspect and examine all accounts, records, and memoranda of natural-gas companies; and it shall be the duty of such natural-gas companies to furnish to the Commission, within such reasonable time as the Commission may order, any information with respect thereto which the Commission may by order require, including copies of maps, contracts, reports of engineers, and other data, records, and papers, and to grant to all agents of the Commission free access to its property and its accounts, records, and memoranda when requested so to do. No member, officer, or employee of the Commission shall divulge any fact or information which may come to his knowledge during the course of examination of books, records, data, or accounts, except insofar as he may be directed by the Commission or by a court.

(c) Books, accounts, etc., of the person controlling gas company subject to examination

The books, accounts, memoranda, and records of any person who controls directly or indirectly a natural-gas company subject to the jurisdiction of the Commission and of any other company controlled by such person, insofar as they relate to transactions with or the business of such natural-gas company, shall be subject to examination on the order of the Commission.

(June 21, 1938, ch. 556, § 8, 52 Stat. 825.)

§ 717h. Rates of depreciation

(a) Depreciation and amortization

The Commission may, after hearing, require natural-gas companies to carry proper and adequate depreciation and amortization accounts in accordance with such rules, regulations, and forms of account as the Commission may prescribe. The Commission may from time to time ascertain and determine, and by order fix, the proper and adequate rates of depreciation and amortization of the several classes of property of each natural-gas company used or useful in the production, transportation, or sale of natural gas. Each natural-gas company shall conform its depreciation and amortization accounts to the rates so ascertained, determined, and fixed. No natural-gas company subject to the jurisdiction of the Commission shall charge to operating expenses any depreciation or amortization charges on classes of property other than those prescribed by the Commission, or charge with respect to any class of property a percentage of depreciation or amortization other than that prescribed therefor by the Commission. No such natural-gas company shall in any case include in any form under its operating or other expenses any depreciation, amortization, or other charge or expenditure included elsewhere as a depreciation or amortization charge or otherwise under its operating or other expenses. Nothing in this section shall limit the power of a State commission to determine in the exercise of its jurisdiction, with respect to any natural-gas company, the percentage rates of depreciation or amortization to be allowed, as to any class of property of such natural-gas company, or the composite depreciation or amortization rate, for the purpose of determining rates or charges.

(b) Rules

The Commission, before prescribing any rules or requirements as to accounts, records, or memoranda, or as to depreciation or amortization rates, shall notify each State commission having jurisdiction with respect to any natural-gas company involved and shall give reasonable

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§ 380.7 Format of an environmental impact statement.

In addition to the requirements for an environmental impact statement prescribed in 40 CFR 1502.10 of the regulations of the Council, an environmental impact statement prepared by the Commission will include a section on the literature cited in the environmental impact statement and a staff conclusion section. The staff conclusion section will include summaries of:

(a) The significant environmental impacts of the proposed action;

(b) Any alternative to the proposed action that would have a less severe environmental impact or impacts and the action preferred by the staff;

(c) Any mitigation measures proposed by the applicant, as well as additional mitigation measures that might be more effective;

(d) Any significant environmental impacts of the proposed action that cannot be mitigated; and

(e) References to any pending, completed, or recommended studies that might provide baseline data or additional data on the proposed action.

§ 380.8 Preparation of environmental documents.

The preparation of environmental documents, as defined in § 1508.10 of the regulations of the Council (40 CFR 1508.10), on hydroelectric projects, natural gas facilities, and electric transmission facilities in national interest electric transmission corridors is the responsibility of the Commission's Office of Energy Projects, 888 First Street NE., Washington, DC 20426, (202) 502–8700. Persons interested in status reports or information on environmental impact statements or other elements of the NEPA process, including the studies or other information the Commission may require on these projects, can contact this office.

[Order 689, 71 FR 69471, Dec. 1, 2006, as amended by Order 756, 77 FR 4895, Feb. 1, 2012]

§ 380.9 Public availability of NEPA documents and public notice of NEPA related hearings and public meetings.

(a)(1) The Commission will comply with the requirements of 40 CFR 1506.6 of the regulations of the Council for public involvement in NEPA.

(2) If an action has effects of primarily local concern, the Commission may give additional notice in a Commission order.

(b) The Commission will make environmental impact statements, environmental assessments, the comments received, and any underlaying documents available to the public pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552 (1982)). The exclusion in the Freedom of Information Act for interagency memoranda is not applicable where such memoranda transmit comments of Federal agencies on the environmental impact of the proposed action. Such materials will be made available to the public at the Commission's Public Reference Room at 888 First Street NE., Room 2A, Washington, DC 20426 at a fee and in the manner described in Part 388 of this chapter. A copy of an environmental impact statement or environmental assessment for hydroelectric projects may also be made available for inspection at the Commission's regional office for the region where the proposed action is located.

[Order 486, 52 FR 47910, Dec. 17, 1987, as amended by Order 603–A, 64 FR 54537, Oct. 7, 1999]

§ 380.10 Participation in Commission proceedings.

(a) *Intervention proceedings involving a party or parties*—(1) *Motion to intervene.* (i) In addition to submitting comments on the NEPA process and NEPA related documents, any person may file a motion to intervene in a Commission proceeding dealing with environmental issues under the terms of § 385.214 of this chapter. Any person who files a motion to intervene on the basis of a draft environmental impact statement will be deemed to have filed a timely motion, in accordance with § 385.214, as long as the motion is filed within the comment period for the draft environmental impact statement.

(ii) Any person that is granted intervention after petitioning becomes a party to the proceeding and accepts the record as developed by the parties as of the time that intervention is granted.

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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 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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§ 1501.2 Apply NEPA early in the process.

(a) Agencies should integrate the NEPA process with other planning and authorization processes at the earliest reasonable time to ensure that agencies consider environmental impacts in their planning and decisions, to avoid delays later in the process, and to head off potential conflicts.

(b) Each agency shall:

(1) Comply with the mandate of section 102(2)(A) of NEPA to utilize a systematic, interdisciplinary approach which will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on man's environment, as specified by § 1507.2(a) of this chapter.

(2) Identify environmental effects and values in adequate detail so the decision maker can appropriately consider such effects and values alongside economic and technical analyses. Whenever practicable, agencies shall review and publish environmental documents and appropriate analyses at the same time as other planning documents.

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

(4) Provide for actions subject to NEPA that are planned by private applicants or other non-Federal entities before Federal involvement so that:

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

(ii) The Federal agency consults early with appropriate State, Tribal, and local governments and with interested private persons and organizations when their involvement is reasonably foreseeable.

(iii) The Federal agency commences its NEPA process at the earliest reasonable time (§§ 1501.5(d) and 1502.5(b) of this chapter).

§ 1501.3 Determine the appropriate level of NEPA review.

(a) In assessing the appropriate level of NEPA review, Federal agencies should determine whether the proposed action:

(1) Normally does not have significant effects and is categorically excluded (§ 1501.4);

(2) Is not likely to have significant effects or the significance of the effects is unknown and is therefore appropriate for an environmental assessment (§ 1501.5); or

(3) Is likely to have significant effects and is therefore appropriate for an environmental impact statement (part 1502 of this chapter).

(b) In considering whether the effects of the proposed action are significant, agencies shall analyze the potentially affected environment and degree of the effects of the action. Agencies should consider connected actions consistent with § 1501.9(e)(1).

(1) In considering the potentially affected environment, agencies should consider, as appropriate to the specific action, the affected area (national, regional, or local) and its resources, such as listed species and designated critical habitat under the Endangered Species Act. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend only upon the effects in the local area.

(2) In considering the degree of the effects, agencies should consider the following, as appropriate to the specific action:

(i) Both short- and long-term effects.

(ii) Both beneficial and adverse effects.

(iii) Effects on public health and safety.

(iv) Effects that would violate Federal, State, Tribal, or local law protecting the environment.

§ 1501.4 Categorical exclusions.

(a) For efficiency, agencies shall identify in their agency NEPA procedures (§ 1507.3(e)(2)(ii) of this chapter) categories of actions that normally do not have a significant effect on the human environment, and therefore do

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not require preparation of an environmental assessment or environmental impact statement.

(b) If an agency determines that a categorical exclusion identified in its agency NEPA procedures covers a proposed action, the agency shall evaluate the action for extraordinary circumstances in which a normally excluded action may have a significant effect.

(1) If an extraordinary circumstance is present, the agency nevertheless may categorically exclude the proposed action if the agency determines that there are circumstances that lessen the impacts or other conditions sufficient to avoid significant effects.

(2) If the agency cannot categorically exclude the proposed action, the agency shall prepare an environmental assessment or environmental impact statement, as appropriate.

§ 1501.5 Environmental assessments.

(a) An agency shall prepare an environmental assessment for a proposed action that is not likely to have significant effects or when the significance of the effects is unknown unless the agency finds that a categorical exclusion (§ 1501.4) is applicable or has decided to prepare an environmental impact statement.

(b) An agency may prepare an environmental assessment on any action in order to assist agency planning and decision making.

(c) An environmental assessment shall:

(1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact; and

(2) Briefly discuss the purpose and need for the proposed action, alternatives as required by section 102(2)(E) of NEPA, and the environmental impacts of the proposed action and alternatives, and include a listing of agencies and persons consulted.

(d) For applications to the agency requiring an environmental assessment, the agency shall commence the environmental assessment as soon as practicable after receiving the application.

(e) Agencies shall involve the public, State, Tribal, and local governments, relevant agencies, and any applicants, to the extent practicable in preparing environmental assessments.

(f) The text of an environmental assessment shall be no more than 75 pages, not including appendices, unless a senior agency official approves in writing an assessment to exceed 75 pages and establishes a new page limit.

(g) Agencies may apply the following provisions to environmental assessments:

(1) Section 1502.21 of this chapter—Incomplete or unavailable information;

(2) Section 1502.23 of this chapter—Methodology and scientific accuracy; and

(3) Section 1502.24 of this chapter—Environmental review and consultation requirements.

§ 1501.6 Findings of no significant impact.

(a) An agency shall prepare a finding of no significant impact if the agency determines, based on the environmental assessment, not to prepare an environmental impact statement because the proposed action will not have significant effects.

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

(2) In the following circumstances, the agency shall make the finding of no significant impact available for public review for 30 days before the agency makes its final determination whether to prepare an environmental impact statement and before the action may begin:

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

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

(b) The finding of no significant impact shall include the environmental assessment or incorporate it by reference and shall note any other environmental documents related to it (§ 1501.9(f)(3)). If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference.

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costs incurred by cooperating and participating agencies, applicants, and contractors.

§ 1502.12 Summary.

Each environmental impact statement shall contain a summary that adequately and accurately summarizes the statement. The summary shall stress the major conclusions, areas of disputed issues raised by agencies and the public, and the issues to be resolved (including the choice among alternatives). The summary normally will not exceed 15 pages.

§ 1502.13 Purpose and need.

The statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.

[87 FR 23469, Apr. 20, 2022]

§ 1502.14 Alternatives including the proposed action.

The alternatives section should present the environmental impacts of the proposed action and the alternatives in comparative form based on the information and analysis presented in the sections on the affected environment (§ 1502.15) and the environmental consequences (§ 1502.16). In this section, agencies shall:

(a) Evaluate reasonable alternatives to the proposed action, and, for alternatives that the agency eliminated from detailed study, briefly discuss the reasons for their elimination.

(b) Discuss each alternative considered in detail, including the proposed action, so that reviewers may evaluate their comparative merits.

(c) Include the no action alternative.

(d) Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.

(e) Include appropriate mitigation measures not already included in the proposed action or alternatives.

(f) Limit their consideration to a reasonable number of alternatives.

§ 1502.15 Affected environment.

The environmental impact statement shall succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration, including the reasonably foreseeable environmental trends and planned actions in the area(s). The environmental impact statement may combine the description with evaluation of the environmental consequences (§ 1502.16), and it shall be no longer than is necessary to understand the effects of the alternatives. Data and analyses in a statement shall be commensurate with the importance of the impact, with less important material summarized, consolidated, or simply referenced. Agencies shall avoid useless bulk in statements and shall concentrate effort and attention on important issues. Verbose descriptions of the affected environment are themselves no measure of the adequacy of an environmental impact statement.

§ 1502.16 Environmental consequences.

(a) The environmental consequences section forms the scientific and analytic basis for the comparisons under § 1502.14. It shall consolidate the discussions of those elements required by sections 102(2)(C)(i), (ii), (iv), and (v) of NEPA that are within the scope of the statement and as much of section 102(2)(C)(iii) of NEPA as is necessary to support the comparisons. This section should not duplicate discussions in § 1502.14. The discussion shall include:

(1) The environmental impacts of the proposed action and reasonable alternatives to the proposed action and the significance of those impacts. The comparison of the proposed action and reasonable alternatives shall be based on this discussion of the impacts.

(2) Any adverse environmental effects that cannot be avoided should the proposal be implemented.

(3) The relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity.

(4) Any irreversible or irretrievable commitments of resources that would be involved in the proposal should it be implemented.

(5) Possible conflicts between the proposed action and the objectives of

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Federal, regional, State, Tribal, and local land use plans, policies and controls for the area concerned. (§ 1506.2(d) of this chapter)

(6) Energy requirements and conservation potential of various alternatives and mitigation measures.

(7) Natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures.

(8) Urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures.

(9) Means to mitigate adverse environmental impacts (if not fully covered under § 1502.14(e)).

(10) Where applicable, economic and technical considerations, including the economic benefits of the proposed action.

(b) Economic or social effects by themselves do not require preparation of an environmental impact statement. However, when the agency determines that economic or social and natural or physical environmental effects are interrelated, the environmental impact statement shall discuss and give appropriate consideration to these effects on the human environment.

§ 1502.17 Summary of submitted alternatives, information, and analyses.

(a) The draft environmental impact statement shall include a summary that identifies all alternatives, information, and analyses submitted by State, Tribal, and local governments and other public commenters during the scoping process for consideration by the lead and cooperating agencies in developing the environmental impact statement.

(1) The agency shall append to the draft environmental impact statement or otherwise publish all comments (or summaries thereof where the response has been exceptionally voluminous) received during the scoping process that identified alternatives, information, and analyses for the agency's consideration.

(2) Consistent with § 1503.1(a)(3) of this chapter, the lead agency shall invite comment on the summary identifying all submitted alternatives, information, and analyses in the draft environmental impact statement.

(b) The final environmental impact statement shall include a summary that identifies all alternatives, information, and analyses submitted by State, Tribal, and local governments and other public commenters for consideration by the lead and cooperating agencies in developing the final environmental impact statement.

§ 1502.18 List of preparers.

The environmental impact statement shall list the names, together with their qualifications (expertise, experience, professional disciplines), of the persons who were primarily responsible for preparing the environmental impact statement or significant background papers, including basic components of the statement. Where possible, the environmental impact statement shall identify the persons who are responsible for a particular analysis, including analyses in background papers. Normally the list will not exceed two pages.

§ 1502.19 Appendix.

If an agency prepares an appendix, the agency shall publish it with the environmental impact statement, and it shall consist of:

(a) Material prepared in connection with an environmental impact statement (as distinct from material that is not so prepared and is incorporated by reference (§ 1501.12 of this chapter)).

(b) Material substantiating any analysis fundamental to the impact statement.

(c) Material relevant to the decision to be made.

(d) For draft environmental impact statements, all comments (or summaries thereof where the response has been exceptionally voluminous) received during the scoping process that identified alternatives, information, and analyses for the agency's consideration.

(e) For final environmental impact statements, the comment summaries and responses consistent with § 1503.4 of this chapter.

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§ 1502.20 Publication of the environmental impact statement.

Agencies shall publish the entire draft and final environmental impact statements and unchanged statements as provided in § 1503.4(c) of this chapter. The agency shall transmit the entire statement electronically (or in paper copy, if so requested due to economic or other hardship) to:

(a) Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved and any appropriate Federal, State, Tribal, or local agency authorized to develop and enforce environmental standards.

(b) The applicant, if any.

(c) Any person, organization, or agency requesting the entire environmental impact statement.

(d) In the case of a final environmental impact statement, any person, organization, or agency that submitted substantive comments on the draft.

§ 1502.21 Incomplete or unavailable information.

(a) When an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an environmental impact statement, and there is incomplete or unavailable information, the agency shall make clear that such information is lacking.

(b) If the incomplete but available information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives, and the overall costs of obtaining it are not unreasonable, the agency shall include the information in the environmental impact statement.

(c) If the information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are unreasonable or the means to obtain it are not known, the agency shall include within the environmental impact statement:

(1) A statement that such information is incomplete or unavailable;

(2) A statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment;

(3) A summary of existing credible scientific evidence that is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment; and

(4) The agency's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community.

(d) For the purposes of this section, ''reasonably foreseeable'' includes impacts that have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason.

§ 1502.22 Cost-benefit analysis.

If the agency is considering a cost-benefit analysis for the proposed action relevant to the choice among alternatives with different environmental effects, the agency shall incorporate the cost-benefit analysis by reference or append it to the statement as an aid in evaluating the environmental consequences. In such cases, to assess the adequacy of compliance with section 102(2)(B) of NEPA (ensuring appropriate consideration of unquantified environmental amenities and values in decision making, along with economical and technical considerations), the statement shall discuss the relationship between that analysis and any analyses of unquantified environmental impacts, values, and amenities. For purposes of complying with the Act, agencies need not display the weighing of the merits and drawbacks of the various alternatives in a monetary cost-benefit analysis and should not do so when there are important qualitative considerations. However, an environmental impact statement should at least indicate those considerations, including factors not related to environmental quality, that are likely to be relevant and important to a decision.

§ 1502.23 Methodology and scientific accuracy.

Agencies shall ensure the professional integrity, including scientific integrity, of the discussions and analyses in environmental documents.

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(3) A proposed action or alternative(s) may include adaptive management strategies allowing for adjustment of the action during implementation. If the adjustments to an action are clearly articulated and pre-specified in the description of the alternative and fully analyzed, then the action may be adjusted during implementation without the need for further analysis. Adaptive management includes a monitoring component, approved adaptive actions that may be taken, and environmental effects analysis for the adaptive actions approved.

(c) *Circulating and filing draft and final environmental impact statements.* (1) The draft and final environmental impact statements shall be filed with the Environmental Protection Agency's Office of Federal Activities in Washington, DC (40 CFR 1506.9).

(2) Requirements at 40 CFR 1506.9 ''Filing requirements,'' 40 CFR 1506.10 ''Timing of agency action,'' 40 CFR 1502.9 ''Draft, final, and supplemental statements,'' and 40 CFR 1502.19 ''Circulation of the environmental impact statement'' shall only apply to draft, final, and supplemental environmental impact statements that are filed with EPA.

§ 46.420 Terms used in an environmental impact statement.

The following terms are commonly used to describe concepts or activities in an environmental impact statement:

(a) *Statement of purpose and need.* In accordance with 40 CFR 1502.13, the statement of purpose and need briefly indicates the underlying purpose and need to which the bureau is responding.

(1) In some instances it may be appropriate for the bureau to describe its ''purpose'' and its ''need'' as distinct aspects. The ''need'' for the action may be described as the underlying problem or opportunity to which the agency is responding with the action. The ''purpose'' may refer to the goal or objective that the bureau is trying to achieve, and should be stated to the extent possible, in terms of desired outcomes.

(2) When a bureau is asked to approve an application or permit, the bureau should consider the needs and goals of the parties involved in the application or permit as well as the public interest. The needs and goals of the parties involved in the application or permit may be described as background information. However, this description must not be confused with the bureau's purpose and need for action. It is the bureau's purpose and need for action that will determine the range of alternatives and provide a basis for the selection of an alternative in a decision.

(b) *Reasonable alternatives.* In addition to the requirements of 40 CFR 1502.14, this term includes alternatives that are technically and economically practical or feasible and meet the purpose and need of the proposed action.

(c) *Range of alternatives.* This term includes all reasonable alternatives, or when there are potentially a very large number of alternatives then a reasonable number of examples covering the full spectrum of reasonable alternatives, each of which must be rigorously explored and objectively evaluated, as well as those other alternatives that are eliminated from detailed study with a brief discussion of the reasons for eliminating them. 40 CFR 1502.14. The Responsible Official must not consider alternatives beyond the range of alternatives discussed in the relevant environmental documents, but may select elements from several alternatives discussed. Moreover, the Responsible Official must, in fact, consider all the alternatives discussed in an environmental impact statement. 40 CFR 1505.1 (e).

(d) *Preferred alternative.* This term refers to the alternative which the bureau believes would best accomplish the purpose and need of the proposed action while fulfilling its statutory mission and responsibilities, giving consideration to economic, environmental, technical, and other factors. It may or may not be the same as the bureau's proposed action, the non-Federal entity's proposal or the environmentally preferable alternative.

§ 46.425 Identification of the preferred alternative in an environmental impact statement.

(a) Unless another law prohibits the expression of a preference, the draft environmental impact statement should

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system on October 27, 2023. Participants in the case will be served by the appellate CM/ECF system.

/s/ Susanna Y. Chu
Susanna Y. Chu