

# FERC

## AN INTRODUCTION

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### The Federal Energy Regulatory Commission

- Independent federal regulatory agency
- Decisions subject to review by federal courts
- FERC implements the Natural Gas Act
- Up to five Commissioners are nominated by the President and confirmed by the Senate
- Chairman is nominated by the President
- Only three commissioners can be from the same political party

## What does FERC regulate?

- Interstate oil and petroleum pipelines, with the exception of pipeline construction, abandonment and safety under the Interstate Commerce Act (49 U.S.C. §§ 1 et seq.)
- Interstate natural gas transmission pipelines under the Natural Gas Act (15 U.S.C. §§ 717 et seq.)
- Hydropower dam licensing projects under Part I of the Federal Power Act (16 U.S.C. §§ 791a - 823d)
- Electricity markets under Parts II and III of the Federal Power Act (16 U.S.C. §§ 824 - 825u)
- Certain sectors under the Energy Policy Act of 2005 (42 U.S.C. §§ 13201 - 13574).

## And what doesn't it regulate?

- Pipeline safety standards  
Regulated by Pipeline and Hazardous Materials Safety Administration (PHMSA)
- Natural gas producers
- Local natural gas distribution or gathering pipelines
- Siting of oil, oil products, and natural gas liquids pipelines
- LNG intrastate commerce

## Regulatory Authority—the Natural Gas Act

- Section 1 - Activities exempt from FERC jurisdiction
- Section 3 - Allows FERC to authorize import and export projects
- Section 7 - Allows FERC to certificate interstate pipeline projects (including storage).



## Eminent Domain—Section 7(h)

- If a holder of a Certificate of Public Convenience and Necessity is unable to acquire by contract or agreement, the necessary property rights to construct a project, Section 7(h) authorizes the holder to acquire the rights by the exercise of eminent domain
- Section 3 (Import/Export) Projects do NOT receive federal eminent domain under the Natural Gas Act

## FERC's Natural Gas Program

- Evaluate applications for facilities to import, export, transport, store, or exchange natural gas
- Authorize siting, construction, and operation of such facilities, including pipelines, compression, storage, and LNG terminals
- Approval of Abandonments (facilities and service)
- Conduct inspections of LNG facilities and pipeline construction

## FERC's Natural Gas Program—LNG

### **LNG Interstate Storage – NGA Section 7**

### **LNG Terminals – NGA Section 3**

- Impact of Facilities & Location (siting and construction)
- Compliance Inspections

### **Section 3**

- U.S. Department of Energy – Public Interest Determination (commodity)
  - Decision for export to non-free trade agreement countries after FERC NEPA review

## FERC Roles and Responsibilities

- FERC's Division of Gas - Environment and Engineering (DG2E) Staff
  - Manage the NEPA process for natural gas facilities
  - Make recommendations to the Commission to avoid, minimize and mitigate impacts
  - Monitor compliance
- Office of the General Counsel—Legal matters
- Division of Pipeline Certificates—Policy, precedents, regulations
- Office of Energy Market Regulation—tariffs, rates, terms and conditions of service

## Regulatory Path

- ▶ Natural Gas Act:
  - ▶ Section 3, 15 USC §717b
    - ▶ Exportation/Importation
  - ▶ Section 7(b), 15 USC §717f (b)
    - ▶ Abandonment
  - ▶ Section 7(c), 15 USC §717f (c)
    - ▶ New Construction
- ▶ FERC Regulations
  - ▶ Section 2.55 Exclusions, 18 CFR § 2.55
  - ▶ Section 157 Blanket Certificates, 18 CFR § 157, Subpart F

## Phases of the FERC Process

- ▶ Project Preparation
  - ▶ Applicant plans project while working with stakeholders
- ▶ Pre-filing
  - ▶ FERC staff works with applicant and stakeholders before applicant files application
- ▶ Application Review
  - ▶ FERC staff analyzes and processes the application
- ▶ Post-Authorization
  - ▶ FERC staff works with applicant and stakeholders to ensure compliance with conditions of certificate

## Applicant's Project Concept

- ▶ Determine project purpose and need
- ▶ Project team training
- ▶ Conduct "open season" to determine market interest
- ▶ Identify a base project
  - ▶ Pipeline alignment
  - ▶ Aboveground facility locations
  - ▶ Interconnects

## Applicant's Project Planning

- ▶ Begin public outreach efforts
- ▶ Identify and contact agencies
  - ▶ Potential resource issues
  - ▶ Applicable permits
- ▶ Develop project execution plans and schedules (e.g., plan field surveys)

## FERC and NEPA

- ▶ The National Environmental Policy Act of 1969
  - ▶ Federal agencies must consider the effects of their actions on the human environment
- ▶ EPCRA 2005 - amended the Natural Gas Act
  - ▶ FERC is always the lead agency for NEPA
  - ▶ FERC coordinates all other federal authorizations, sets the schedule
- ▶ CEQ regulations for implementing NEPA - 40 CFR 1500-1508
- ▶ FERC's regulations implementing NEPA - 18 CFR 380

## NEPA Documents

- ▶ Categorical Exclusion
  - ▶ Routine activities
  - ▶ Actions that will not individually or cumulatively have a significant effect on human environment
- ▶ Environmental Assessment
  - ▶ Projects where significance of effect on human environment is unknown
  - ▶ Projects that do not pose a significant effect on human environment
- ▶ Environmental Impact Statement
  - ▶ Projects with significant effects on human environment
  - ▶ Complex projects

## Cooperating and Participating Agencies

- ▶ Cooperating agencies have NEPA responsibility or expertise
- ▶ During Pre-filing, all agencies can participate the same because there is no ex parte
- ▶ During Application review ex parte does not apply to FERC staff and co-ops
- ▶ Participating agencies provide comments on the record during the proceeding
- ▶ Cooperators get advanced review of draft NEPA document



## Agency roles and responsibilities

- ▶ FERC
  - ▶ Lead federal agency responsible for complying with NEPA
  - ▶ Establishes and maintains schedule for federal authorizations
  - ▶ Coordinates all federal authorizations and agency comments
  - ▶ Compiles agency actions and decisions into a consolidated record
- ▶ Other agencies
  - ▶ Coordinate with FERC and other agencies to:
    - identify and resolve issues early in the process;
    - coordinate schedules;
    - share data; and
    - coordinate requests for additional information.

## PRE-FILING PROCESS

- ▶ Pre-Filing Authorization
- ▶ Stakeholder Outreach
- ▶ NEPA Scoping
- ▶ Resource Reports 1–13

18 CFR § 157.21

## Filing Types - Pre-filing and Traditional

- ▶ Pre-Filing
  - ▶ FERC involvement begins before an Application is filed
  - ▶ Provides opportunity for identification of stakeholders concerns early in the process
- ▶ Traditional
  - ▶ Used for smaller, less complex and lesser degree of public interest projects
  - ▶ FERC involvement begins once an Application is filed
  - ▶ Pre-Application stakeholder outreach is the responsibility of the Applicant

Ex-parte rules governing off-the-record communications do not apply during Pre-Filing

## Pre-Filing Process

- ▶ Begin project review prior to Application
  - ▶ Involves earlier interaction between FERC, Applicant, and stakeholders
  - ▶ Early identification of issues and resolution, where possible
  - ▶ Pre-Filing is required for all LNG terminals
  - ▶ Pre-Filing is recommended for:
    - ▶ projects proposing an Applicant-Prepared Draft EA
    - ▶ certain natural gas facility projects

Refer to FERC's guidance document "Guidelines for Applicant-Prepared Draft Environmental Assessments"

## Applicant Initial Consultation with FERC

- ▶ Introduce project to FERC
- ▶ Discuss environmental and non-environmental issues & requirements
- ▶ Discuss status of ongoing activities (e.g., public outreach)
- ▶ Determine regulatory path and NEPA document options
- ▶ Submit drafts
  - ▶ Pre-Filing Request Letter
  - ▶ RFP for third-party contractors to prepare NEPA document

What is a 3rd Party Contractor?

A contractor that works for FERC, paid for by the application, but subject to the same rules as FERC staff (e.g., ex parte).

## Pre-filing Request and Approval

Pre-Filing request filed in accordance with regulations:

- ▶ Reason for requesting
- ▶ Project description, maps, drawings
- ▶ Proposed project schedule
- ▶ Federal and state agency involvement
  
- ▶ FERC reviews and issues a letter:
  - ▶ Approves Pre-Filing
  - ▶ Selects a 3rd-party contractor or allows for applicant prepared EA.

## Pre-Filing Clock

- ▶ The clock starts when the PF approval notice is issued
  - ▶ 7 Days—Identify locations for open houses and agency meetings
  - ▶ 14 Days—Execute contract for third-party NEPA contractor and inform stakeholders about the project
  - ▶ 30 Days—Submit updated mailing list and file draft Resource Report 1 and summary of alternatives considered
  - ▶ 180 Days—File WSA (LNG only) and 7(c) Application

## Public Record

- ▶ Project-related submittals, reports, comments, and communications are posted to eLibrary
- ▶ Record will include materials for all associated docket numbers (i.e., CP docket number)
- ▶ Agency and stakeholder comments
- ▶ Basis for Commission decisions

## Open Houses

- ▶ Open to the public
- ▶ Sponsored and hosted by Applicant
- ▶ Informal setting
- ▶ FERC/3rd-party contractor will attend
- ▶ General discussions are not part of the public record
- ▶ FERC site review?
  
- ▶ Number and locations of open houses are project specific

## Notice of Intent (NOI)

- ▶ NOI is start of NEPA process
- ▶ Issuance starts scoping period
- ▶ Indicates close of scoping period
- ▶ Indicates type of NEPA document to be prepared
- ▶ Requests cooperating agencies
- ▶ Announces public scoping sessions to be held
  
- ▶ What is Scoping? - Process for identifying those issues that need to be considered in the NEPA document

## Scoping Sessions

- ▶ Purpose is to solicit comments on the proposed project
- ▶ Sponsored and hosted by FERC
- ▶ Included as part of public record
  - Public scoping session transcripts

## Interagency Coordination Meetings & Regular Pre-filing FERC/Agency/Applicant Calls

- ▶ Applicant provides a project status update
- ▶ FERC identifies agency roles and responsibilities for NEPA review (initial meeting)
- ▶ Agencies identify issues and concerns

## NEPA Scoping Clock

The clock starts when NEPA scoping period concludes

14 Days—Within 14 days of the end of the scoping comment period, respond to issues raised during scoping.

60 Days—Within 60 days of the end of the scoping comment period, file draft Resource Reports 1-12.

## Resource Reports 1-6

- ▶ 1: General Project Description
- ▶ 2: Water Use and Quality
- ▶ 3: Fish, Wildlife, and Vegetation
- ▶ 4: Cultural Resources
- ▶ 5: Socioeconomics
- ▶ 6: Geological Resources

## Resource Reports 7-13

- ▶ 7: Soils
  - ▶ 8: Land Use, Recreation and Aesthetics
  - ▶ 9: Air and Noise Quality
  - ▶ 10: Alternatives
  - ▶ 11: Reliability and Safety
  - ▶ 12: PCB Contamination
  - ▶ 13: Engineering and Design Material (LNG)
- Refer to FERC's guidance document "Guidance Manual for Environmental Report Preparation"

## Resource Report Requirements

- ▶ Existing conditions
- ▶ Direct, indirect, and cumulative impacts
  - Construction
  - Operation
  - Abandonment
- ▶ Proposed mitigation measures
  - Applicant-committed
  - Agency-recommended
- ▶ Applicable agency correspondence
- ▶ Reference list



## FERC Comments/Data Request

- ▶ FERC will issue comments on draft RRs during Pre-Filing
  - FERC may require written response and/or
  - May require comments to be incorporated into next round of RRs
- ▶ Once application is filed, FERC will issue a data request for missing, incomplete, or inconsistent information
  - Applicant will respond to each question

## Application Filing

- ▶ The clock starts when the CP docket number is issued
- ▶ 3 Days—Place copies of Application in libraries or other publicly accessible central locations in each county throughout project area
- ▶ 7-10 Days—FERC issues Notice of Application in Federal Register
  - ▶ 3 Days—Mail landowner notification packets to mailing list (within 3 days of issuance of Notice)
- ▶ 14 Days—Publish Notice twice in a general circulation newspaper in each county
- ▶ 30 Days—File updated landowner list

## Ex parte

- ▶ Once application is filed, communication must be:
  - in a public manner (no private meetings or calls)
  - “on the record” (part of decisional file / equal opportunity)
- ▶ Assures fairness and transparency in the development of the record that FERC will use for its decision
- ▶ Certain exceptions, but they need to be disclosed
- ▶ Procedural matters are not ex parte

## Landowner Notification Letter

- ▶ Docket number
- ▶ Certificate process pamphlet
- ▶ Company and project information, including maps
- ▶ Company and FERC contact information
- ▶ Landowner rights and eminent domain information
- ▶ Locations where Application is available
- ▶ Notice of Application

## NEPA Review—Environmental Assessment

- ▶ There is no draft EA
- ▶ FERC must have necessary information for a Finding of No Significant Impact to issue an EA, otherwise an EIS would be required
- ▶ A Notice of Schedule will be issued once FERC has the necessary information, unless EA issued within 90 days of Notice of Application
- ▶ 30 day comment period
- ▶ Company should respond to substantive comments received on EA
- ▶ FERC will address comments within the Order

## Draft EIS

- ▶ FERC's third-party contractor begins work prior to the Application being submitted
- ▶ Once all necessary information has been received, FERC estimates it will take four months to issue the Draft EIS
- ▶ EPA will issue Notice of Availability in Federal Register opening 45-day comment period for all stakeholders

## Draft EIS Comment Sessions

- ▶ Sponsored and hosted by FERC
- ▶ Meeting transcripts included as part of public record
- ▶ Similar format to scoping sessions
- ▶ Discussion with FERC staff limited to process
- ▶ Applicants typically do not participate

## Final EIS

- ▶ FERC estimates 4 months from issuance of Draft EIS to issuance of Final EIS (assuming “prior to close of comment period recommendations” have been addressed)
- ▶ Addresses comments received on Draft EIS
- ▶ Final EIS is FERC’s final environmental document
- ▶ FERC and EPA will issue Notices of Availability in Federal Register

## The Commission Decision

Environmental staff works to help address comments:

- ▶ EA decision - once comments are addressed
- ▶ EIS decision - estimated 2 months after FEIS

Decision is made in two possible ways:

- ▶ Notational
  - Internal vote by Commissioners
  - Done as needed
- ▶ Commission Meeting
  - Voted on at/prior to meeting, but part of agenda
  - Meetings are 3rd Thursday of every month, except August

## Order/Certificate

- ▶ Commission will vote on proposed project and issue an Order
- ▶ Applicant "accepts" Certificate within 30 days
- ▶ Intervenors can seek rehearing of decision

Order issuing the Certificate:

- ▶ Summarizes open season results, proposed rates, tariffs, and capacity
- ▶ Identifies intervenors
- ▶ Summarizes environmental impacts and alternatives evaluated
- ▶ Identifies Conditions

## Construction—Implementation Plan

- ▶ Typically submitted within 60 days of acceptance of Certificate
- ▶ Includes Applicant-committed plans, reports, documents, and clearances
- ▶ Provides opportunity for changes
- ▶ Describes how environmental requirements will be communicated

## Notice to Proceed (NTP) Request

- ▶ Applicant must submit a NTP request to begin construction after:
  - All applicable permits and authorizations have been obtained
  - All pre-construction requirements have been fulfilled

## NTP Authorization Letter

- ▶ FERC staff issues, identifying what is and is not approved for construction (If the entire project is not ready to go to construction, requests can be submitted for discrete spreads, segments, or facilities, pending they show utility.)

## Environmental Compliance Management Program Elements

- ▶ Environmental Training
- ▶ Environmental Inspection Team
- ▶ Compliance Monitoring Team
- ▶ Compliance Reporting
- ▶ Variance Process

## FERC Compliance Monitoring

- ▶ Two general approaches
  - Periodic FERC staff inspections
  - Third Party Monitoring Program (full time monitors)
- ▶ Approach based on:
  - High degree of public interest Project
  - Project complexity
  - Many environmental issues/resources

## Role of EI vs. CM

- ▶ EI:
- ▶ Represents Company
- ▶ Inspects and documents compliance
- ▶ Communicates directly with contractor
- ▶ Stop activity authority
- ▶ Order corrective actions
- ▶ Assist with development of variances

## CM

- ▶ Represents FERC
- ▶ Documents effectiveness of company compliance program
- ▶ Communicates with EI
- ▶ Discrete stop activity authority
- ▶ Document corrective actions and timing
- ▶ Field review of variance request



## Section 2.55 Exclusions

- ▶ Auxiliary installations, replacements, and abandonments
- ▶ On existing Certificated systems with a few exceptions
- ▶ Subject to the FERC's NGA jurisdiction
- ▶ No new Certificate authority required
  - No federal action & NEPA not required
  - FERC staff reviews advanced notifications/annual reports
  - FERC staff may also conduct compliance inspections
- ▶ Company must comply with environmental restrictions of the original Certificate and other applicable federal laws and landowner agreements
- ▶ Landowner notifications are required

## 2.55(a) Installations

- ▶ On Certificated or proposed transmission pipeline systems
- ▶ Auxiliary or appurtenant facility
- ▶ Installed to obtain more efficient or economical operation
  
- ▶ Ex: Water pumping, treatment, and cooling equipment; Electrical and communication systems; Residual refining equipment; Cathodic protection equipment; Valves and drips; Pig launchers/receivers; Yard and station piping; Buildings; Gas cleaning, cooling, and dehydration equipment

## 2.55(b) Replacements

- ▶ On a Certificated transmission pipeline system
- ▶ Replaces existing facility that is or soon will become physically deteriorated or obsolete
- ▶ Substantially equivalent in designed delivery capacity

## Construction Work Area for 2.55 Projects

- ▶ All activities must occur within Certificated rights-of-way and previously used workspaces
- ▶ Guidelines where the original work area is unknown:
  - ▶ **Construction ROW width based on pipe diameter**
    - <75 feet for >12" diameter
    - <50 feet for <12" diameter

## Blanket Certificate Projects—Section 157, Subpart F

- ▶ Certain “pre-approved” activities do not require an individual Certificate
- ▶ Authorization is granted under a Blanket Certificate
- ▶ A FERC environmental review will be conducted
- ▶ Project must comply with
  - Other applicable federal and state laws
  - FERC Plan and Procedures (75-foot ROW)
- ▶ Blanket Certificates are typically requested in conjunction with 7(c) filings for major projects or systems

## DEP’s role in the process

- ▶ State Water Quality Certification Process
- ▶ The Applicant’s Early Project Concept and Planning Stage
- ▶ Pre-filing process
  - ▶ DEP will be asked by FERC whether the agency will act as a “participating agency” or “cooperating agency” in the development and review of the NEPA Environmental Assessment (EA) or Environmental Impact Statement (EIS).

## Participating vs. Cooperating Agency

- ▶ As a *participating agency*, DEP can participate in scheduled conference calls, receive project updates and provide input as the company and FERC work through the process until a draft EA/EIS is under development.
- ▶ As a *cooperating agency*, DEP can participate in scheduled conference calls, receive project updates, provide input as the company and FERC work through the process and additionally be involved in the review and development of the draft EA/EIS.
- ▶ DEP typically does not designate itself as a cooperating agency because a cooperating agency is not entitled to intervene in the Commission proceeding that commences when the company files its application with the FERC.

Questions?