ORAL ARGUMENT NOT YET SCHEDULED

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

Nos. 20-1161, 20-1171, 20-1172, 20-1180 & 20-1198 (consolidated)

DEBORAH EVANS, *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

MATTHEW R. CHRISTIANSEN
GENERAL COUNSEL

ROBERT H. SOLOMON
SOLICITOR

SUSANNA Y. CHU
ATTORNEY

FOR RESPONDENT
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

APRIL 22, 2021

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

A. Parties

The parties and intervenors before this Court and before the Federal Energy Regulatory Commission in the underlying agency docket are as stated in Petitioners' opening briefs.

B. Rulings Under Review

1. *Jordan Cove Energy Project L.P., Pacific Connector Gas Pipeline, LP*, 170 FERC ¶ 61,202 (2020) ("Authorization Order"), R. 3737, JA ___-___; and

2. *Jordan Cove Energy Project L.P., Pacific Connector Gas Pipeline, LP*, 171 FERC ¶ 61,136 (2020) ("Rehearing Order"), R. 3761, JA ___-___.

C. Related Cases

In October 2020, this Court denied a motion filed by Petitioners Deborah Evans, *et al*. in No. 20-1161 for summary vacatur or stay of the Commission's pipeline certification authorization pending judicial review.

While not related within the meaning of D.C. Cir. Rule 28(a)(1)(C), several recently argued and submitted cases, on review of FERC authorizations of other natural gas pipelines and terminals under Natural Gas Act sections 3 and 7, 15 U.S.C. §§ 717b and 717f, raise

issues relevant to the merits of this case. These cases are: *Food & Water Watch v. FERC*, No. 20-1132 (argued Feb. 12, 2021); *Envtl. Def. Fund v. FERC*, Nos. 20-1016, *et al.* (argued Mar. 8, 2021); *Vecinos para el Bienestar, et al. v. FERC*, No. 20-1045 (argued Mar. 23, 2021); and *Vecinos para el Bienestar v. FERC*, Nos. 20-1093 & 20-1094 (argued Mar. 23, 2021).

/s/ Susanna Y. Chu
Susanna Y. Chu
Attorney

TABLE OF CONTENTS

PAGE

STATEMENT OF ISSUES 1

JURISDICTIONAL STATEMENT 3

STATUTORY AND REGULATORY PROVISIONS 5

STATEMENT OF THE CASE 5

I. STATUTORY AND REGULATORY BACKGROUND 5

A. The Natural Gas Act 5

B. National Environmental Policy Act 8

II. THE COMMISSION'S REVIEW 9

A. An Overview of Liquefied Natural Gas 9

B. The Jordan Cove Terminal and Pacific Connector Pipeline Project 10

1. 2013-2016 Applications and Denial 10

2. 2017 Project Proposal 11

C. The Commission's Environmental Analysis 13

D. The Commission's Conditional Authorization Order 14

E. The Rehearing Order 17

III. THE DEPARTMENT OF ENERGY'S REVIEW 19

IV. POST-AUTHORIZATION DEVELOPMENTS 21

A. The Court's Denial of Landowners' Motion for Summary Vacatur or Stay of the Pipeline Certificate 21

B. Oregon's Coastal Zone Management Act Denial Upheld by the U.S. Secretary of Commerce 23

C. The Commission Finds that Oregon Did Not Waive Its Clean Water Act Certification Authority 25

D. Company Statements 27

SUMMARY OF ARGUMENT 30

ARGUMENT 32

I. THE PETITIONS SHOULD BE DISMISSED FOR LACK OF A JUSTICIABLE CONTROVERSY 32

A. Petitioners Have Not Established A Concrete and Particularized Injury Sufficient to Support Article III Standing 32

B. In the Alternative, the Petitions Should Be Dismissed, or Held in Abeyance, Because Petitioners' Challenges Are Not Ripe for Immediate Review 37

II. STANDARD OF REVIEW 42

III. THE COMMISSION APPROPRIATELY FOUND THAT THE PIPELINE WOULD SERVE THE PUBLIC CONVENIENCE AND NECESSITY UNDER NATURAL GAS ACT SECTION 7 44

A. The Commission Reasonably Evaluated Project Need Consistent with this Court's Precedent and the Commission's Certificate Policy Statement 45

B. The Commission Reasonably Balanced the Benefits of the Pipeline with Potential Adverse Impacts 48

C. The Commission Reasonably Determined that the Destination of the Gas Did Not Disqualify the Pipeline from Certification Under Natural Gas Act Section 7 51

IV. THE COMMISSION'S CONDITIONAL AUTHORIZATION OF THE PROJECT, PRIOR TO OTHER NEEDED AUTHORIZATIONS, IS PERMISSIBLE UNDER ESTABLISHED LAW 56

A. The Commission Appropriately Issued Conditional Authorizations for the Project, Dependent on the Receipt of Other Necessary Authorizations 56

B. The Commission Reasonably Conditioned Its Authorization on the Completion of Cultural Resource Reports and the Consultation Process Under the National Historic Preservation Act 59

V. THE COMMISSION APPROPRIATELY ANALYZED THE PROJECT UNDER THE NATIONAL ENVIRONMENTAL POLICY ACT 61

A. Alternatives 62

1. The No-Action Alternative 63

2. The Waste Heat Alternative 65

B. Potential Impacts on Airport Operations 65

C. Wildfire Risks 68

D. Wetlands 70

E. Greenhouse Gas Emissions 72

CONCLUSION...... 76

TABLE OF AUTHORITIES

COURT CASES: **PAGE**

Abbott Labs. v. Gardner,
387 U.S. 136 (1967) 38, 39

* *Appalachian Voices v. FERC*,
No. 17-1271, 2019 WL 847199
(D.C. Cir. Feb. 19, 2019).....47, 57, 61, 74, 75

Associated Gas Distributors v. FERC,
824 F.2d 981 (D.C. Cir. 1987) 55

Atl. Refining Co. v. Pub. Serv. Comm'n of N.Y.,
360 U.S. 378 (1959) 53

Balt. Gas & Elec. Co. v. Nat. Res. Def. Council, Inc.,
462 U.S. 87 (1983) 8, 44, 62

Birckhead v. FERC,
925 F.3d 510 (D.C. Cir. 2019) 62, 65

Brooklyn Union Gas Co. v. FERC,
409 F.3d 404 (D.C. Cir. 2005) 75

Chevron U.S.A. Inc. v. Nat. Res. Defense Council, Inc.,
467 U.S. 837 (1984) 55

City of Boston Delegation v. FERC,
897 F.3d 241 (D.C. Cir. 2018) 44, 68, 72

---

*Cases chiefly relied upon are marked with an asterisk.

City of Fall River v. FERC,
507 F.3d 1 (1st Cir. 2007) 5, 41

City of Grapevine v. Dep't of Transp.,
17 F.3d 1502 (D.C. Cir. 1994) 61

* *City of Oberlin v. FERC*,
937 F.3d 599 (D.C. Cir. 2019) 22, 47, 51, 52, 68, 70, 72

Clapper v. Amnesty Int'l USA,
133 S. Ct. 1138 (2013) 34, 37

Cmtys. Against Runway Expansion, Inc. v. FAA,
355 F.3d 678 (D.C. Cir. 2004) 43-44

Columbia Gas Transmission Corp. v. FERC,
750 F.2d 105 (D.C. Cir. 1984) 45

Contrast Border Pipe Line Co. v. FPC,
171 F.2d 149 (D.C. Cir. 1948) 52

* *Del. Dep't of Nat. Res. & Envtl. Control v. FERC*,
558 F.3d 575 (D.C. Cir. 2009) 4, 23, 35

Del. Riverkeeper Network v. FERC,
753 F.3d 1304 (D.C. Cir. 2014) 66

Del. Riverkeeper Network v. FERC,
857 F.3d 388 (D.C. Cir. 2017) 57, 58

Dep't of Transp. v. Pub. Citizen,
541 U.S. 752 (2004) 8

* *Devia v. Nuclear Regulatory Comm'n*,
492 F.3d 421 (D.C. Cir. 2007) 4, 38

Dominion Transmission, Inc. v. Summers,
723 F.3d 238 (D.C. Cir. 2013) 7

* *EarthReports, Inc. v. FERC*,
828 F.3d 949 (D.C. Cir. 2016) 54, 69, 70, 72, 74-75

Envtl. Def. Fund, Inc. v. Massey,
986 F.2d 528 (D.C. Cir. 1993) 64

FERC v. Elec. Power Supply Ass'n,
136 S. Ct. 760 (2016) 42

Fla. Gas Transmission Co. v. FERC,
604 F.3d 636 (D.C. Cir. 2010) 49

FPC v. Transcon. Gas Pipe Line Corp.,
365 U.S. 1 (1961) 45, 56

Hoopa Valley Tribe v. FERC,
913 F.3d 1099 (D.C. Cir. 2019) 26

Lujan v. Defenders of Wildlife,
504 U.S. 555 (1992) 4, 32, 34-35

Mid States Coalition for Progress v. Surface Transp. Bd.,
345 F.3d 520 (8th Cir. 2003) 61

* *Minisink Residents for Envtl. Pres. & Safety v. FERC*,
762 F.3d 97 (D.C. Cir. 2014) 44, 56, 62

Mobil Oil Exploration & Producing Se., Inc. v. United States,
530 U.S. 604 (2000) 23

* *Myersville Citizens for a Rural Cmty. v. FERC*,
783 F.3d 1301 (D.C. Cir. 2015) 43, 55, 57, 62

NAACP v. FPC,
425 U.S. 662 (1976) 5

Nat. Res. Def. Council, Inc. v. Hodel,
865 F.2d 288 (D.C. Cir. 1988) 44

Nat'l Comm. for the New River, Inc. v. FERC,
373 F.3d 1323 (D.C. Cir. 2004) 44

Nat'l Park Hospitality Ass'n v. Dep't of Interior,
538 U.S. 803 (2003) 40

Nat'l Treasury Employees Union v. United States,
101 F.3d 1423 (D.C. Cir. 1996) 39

Nevada v. Dep't of Energy,
457 F.3d 78 (D.C. Cir. 2006) 43

New York Reg'l Interconnect v. FERC,
634 F.3d 581 (D.C. Cir. 2011) 37

Pub. Serv. Comm'n v. FERC,
777 F.2d 31 (D.C. Cir. 1985) 43

Pub. Utils. Comm'n of Cal. v. FERC,
900 F.2d 269 (D.C. Cir. 1990) 57, 61

Roberson v. Methow Valley Citizens Council,
490 U.S. 332 (1989) 8

Sierra Club v. FERC,
672 F. App'x 38 (D.C. Cir. 2016) 74-75

Sierra Club v. FERC,
827 F.3d 36 (D.C. Cir. 2016) 6

Sierra Club v. FERC,
867 F.3d 1357 (D.C. Cir. 2017) 62

Spokeo, Inc. v. Robins,
136 S. Ct. 1540 (2016) 34

Texas v. United States,
523 U.S. 296 (1998) 4-5, 38, 40

Town of Stratford v. Fed. Aviation Admin.,
285 F.3d 84 (D.C. Cir. 2002) 41

Va. House of Delegates v. Bethune-Hill,
139 S. Ct. 1945 (2019) 32

W. Va. Pub. Servs. Comm'n v. Dep't of Energy,
681 F.2d 847 (D.C. Cir. 1982) 7, 43

ADMINISTRATIVE CASES:

Certification of New Interstate Natural Gas Pipeline Facilities,
88 FERC ¶ 61,227 (1999), clarified,
90 FERC ¶ 61,128, further clarified,
92 FERC ¶ 61,094 (2000) (Policy Statement) 46, 49

Certification of New Interstate Natural Gas Facilities,
163 FERC ¶ 61,042 (2018) and
174 FERC ¶ 61,125 (2021) 46

Independence Pipeline Co.,
89 FERC ¶ 61,283 (1999) 48

Jordan Cove Energy Project, L.P.,
154 FERC ¶ 61,190 (2016) 10, 48

Mountain Valley Pipeline LLC,
161 FERC ¶ 61,043 (2017) 48

Northern Natural Gas Co.,
174 FERC ¶ 61,189 (2021) 75

Pac. Connector Gas Pipeline, LP, Jordan Cove Energy Project L.P., 174 FERC ¶ 61,057 (2021) 27, 33

STATUTES:

Administrative Procedure Act

5 U.S.C. § 706(2)(A) 42

Clean Water Act

33 U.S.C. §§ 1341(a)(1)-(2) 2-3, 16-18, 25, 27, 29, 33-34, 56

Coastal Zone Management Act

16 U.S.C. § 1456(c)(3)(A) 2, 3, 16-18, 23-25, 29, 32, 33, 56

Department of Energy

42 U.S.C. § 7151(b) 6

42 U.S.C. § 7172(e) 7

National Environmental Policy Act

42 U.S.C. § 4321, et seq. 2, 3, 8, 59

National Historic Preservation Act

54 U.S.C. § 306108 ..... 2, 59

Natural Gas Act

Section 1, 15 U.S.C. §§ 717(a), (b), (c) 5, 6

Section 3, 15 U.S.C. § 717b 1-2, 6, 10, 14, 29-30, 43, 45, 53

Section 3(a), 15 U.S.C. § 717b(a) 6, 7, 14

Section 3(c), 15 U.S.C. § 717b(c) 6, 54

Section 3(e), 15 U.S.C. § 717b(e)..... 6

Section 7, 15 U.S.C. § 717f..... 1-2, 10, 14, 17, 22, 29, 31, 43, 54

Section 7(c), 15 U.S.C. § 71f(c) 45

Section 7(e), 15 U.S.C. § 717f(e)..... 7, 46, 53, 57

Section 15, 15 U.S.C. § 717n(b)(1) 8

Section 19, 15 U.S.C. § 717r(b) 3

GLOSSARY

Authorization Order	*Jordan Cove Energy Project L.P.*, 170 FERC ¶ 61,202 (2020)
Commission or FERC	Respondent Federal Energy Regulatory Commission
Jordan Cove	Jordan Cove Energy Project L.P.
Landowners	Landowner Petitioners Deborah Evans, *et al*. and Conservation Petitioners Rogue Riverkeeper, *et al*.
LNG	Liquefied Natural Gas
NEPA	National Environmental Policy Act, 42 U.S.C. § 4321, *et seq*.
Oregon	Petitioner State of Oregon
P	Paragraph number in a FERC order
Pacific Connector	Pacific Connector Gas Pipeline LP
Pembina	Pembina Pipeline Corp.
Pipeline	Pacific Connector Pipeline
Project	Collectively, the Terminal and the Pipeline
R.	FERC certified index to record number
Rehearing Order	*Jordan Cove Energy Project L.P.*, 171 FERC ¶ 61,136 (2020)

Terminal	Jordan Cove liquefied natural gas export terminal
Tribes	Petitioners Confederated Tribes of the Coos, Lower Umpqua & Siuslaw Indians, and Cow Creek Band of Umpqua Tribe of Indians

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

No. 20-1161 (consolidated with Nos. 20-1171, *et al.*)

DEBORAH EVANS, *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

STATEMENT OF ISSUES

The petitions for review challenge the Commission's conditional authorization of the Jordan Cove liquefied natural gas export terminal (the "Terminal") and Pacific Gas Connector pipeline project (the "Pipeline") under the Natural Gas Act, 15 U.S.C. §§ 717b and 717f. Because recent developments preclude the proposed project from going forward—and it is unclear whether the project will ever proceed—the Court should dismiss the petitions for lack of a justiciable controversy (standing or ripeness) or hold the petitions in abeyance.

If the Court proceeds to the merits, the opening briefs filed by Petitioners Deborah Evans, *et al*. ("Landowners"), State of Oregon ("Oregon"), and Confederated Tribes of the Coos, *et al*. ("Tribes") raise the following issues:

1. Whether the Commission reasonably conditionally authorized the Pipeline—which is designed to transport natural gas to the Terminal for export—as required in the "public convenience and necessity" under Natural Gas Act section 7, 15 U.S.C. § 717f;

2. Whether the Commission reasonably conditionally authorized the Terminal under Natural Gas Act section 3, 15 U.S.C. § 717b, which requires authorization unless the Project "will not be consistent with the public interest," as well as the Pipeline under Natural Gas Act section 7, 15 U.S.C. § 717f, prior to (1) issuance of necessary state approvals under the Coastal Zone Management Act, 16 U.S.C. § 1456(c)(3)(A), and the Clean Water Act, 33 U.S.C. § 1341(a)(1), and (2) completion of certain cultural resource impact analyses pursuant to the National Historic Preservation Act, 54 U.S.C. § 306108, and the National Environmental Policy Act, 42 U.S.C. § 4321, *et seq*.; and

3. Whether the Commission reasonably analyzed environmental impacts consistent with the National Environmental Policy Act, 42 U.S.C. § 4321, *et seq*.

JURISDICTIONAL STATEMENT

The petitions are before the Court pursuant to 15 U.S.C. § 717r(b). However, none of the petitions presents a justiciable controversy. As discussed below (*see* Statement of the Case section IV and Argument section I), the challenged orders conditionally authorize a natural gas infrastructure project, but specify that construction may not commence until project sponsors have obtained certain regulatory authorizations, including authorizations from the State of Oregon pursuant to the Coastal Zone Management Act, 16 U.S.C. § 1456(c)(3)(A), and Clean Water Act, 33 U.S.C. § 1341(a)(1). Because Oregon has denied these authorizations—and because the U.S. Secretary of Commerce upheld the former denial and the Commission found that the state had not waived its authority to issue the latter denial—conditions underlying the FERC authorizations have failed. The Project cannot proceed, absent a change in circumstances.

In light of these developments, Petitioners cannot demonstrate the "irreducible constitutional minimum" requirements for Article III standing, in particular, (1) an "injury in fact" that is "concrete and particularized" and "actual or imminent, not conjectural or hypothetical," (2) that has a "causal connection" with the challenged agency action, and (3) that likely "will be redressed by a favorable decision." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (citations and internal quotation marks omitted); *see also Del. Dep't of Nat. Res. & Envtl. Control v. FERC*, 558 F.3d 575, 576 (D.C. Cir. 2009) (state "ha[d] not suffered an injury-in-fact" and lacked standing to challenge FERC's conditional authorization of a liquefied natural gas import terminal, where state's denial of Coastal Zone Management Act consistency certification blocked project from going forward).

Alternatively, the petitions are not ripe for review, and the cases should be dismissed or held in abeyance, because it is now "speculative whether the project will ever be able to proceed." *Devia v. Nuclear Regulatory Comm'n*, 492 F.3d 421, 422 (D.C. Cir. 2007) (finding petitioners' challenge unripe where, after issuance of challenged license order, other agencies denied necessary authorizations); *see also Texas v.*

United States, 523 U.S. 296, 300 (1998) ("A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all.") (citation and internal quotation marks omitted); *City of Fall River v. FERC*, 507 F.3d 1, 6-7 (1st Cir. 2007) (FERC's conditional authorization of liquefied natural gas terminal and pipeline unripe for review, where project "may well never go forward").

STATUTORY AND REGULATORY PROVISIONS

The pertinent statutes and regulations are contained in the Addendum to this brief.

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). To meet these aims, Congress vested the Commission with jurisdiction over the

transportation and wholesale sale of natural gas in interstate commerce. *Id.* §§ 717(b), (c).

Section 3 of the Natural Gas Act, 15 U.S.C. § 717b, prohibits the exportation of any natural gas from the United States to a foreign country without "first having secured an order of the Commission authorizing" such exportation. The Act "deemed" exports to a country with which the United States has a "free trade agreement requiring national treatment for trade in natural gas … to be consistent with the public interest." *Id.* § 717b(c); *see also*, *e.g.*, *Sierra Club v. FERC*, 827 F.3d 36, 40-41 (D.C. Cir. 2016) (explaining statutory responsibilities for natural gas exports).

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).

The Commission's statutory authority extends only to a review of the technical and environmental aspects of proposed import or export terminal facilities. The Act provides that the Commission "shall" authorize a proposed liquefied natural gas project unless it finds that construction and operation of the facilities "will not be consistent with the public interest." 15 U.S.C. § 717b(a). Section 3 thus "sets out a general presumption favoring such authorization." *W. Va. Pub. Servs. Comm'n v. Dep't of Energy*, 681 F.2d 847, 856 (D.C. Cir. 1982).

Before constructing a natural gas pipeline, a company must obtain a "certificate of public convenience and necessity" from the Commission and "comply with all other federal, state, and local regulations not preempted by the" Act. *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 240 (D.C. Cir. 2013). Under section 7(e) of the Act, the Commission "shall" issue a certificate if it determines that a proposed pipeline "is or will be required by the present or future public convenience and necessity." 15 U.S.C. § 717f(e).

B. National Environmental Policy Act

The Commission's consideration of a liquefied natural gas terminal and associated interstate pipeline triggers the requirements of the National Environmental Policy Act ("NEPA"). *See* 42 U.S.C. § 4321, *et seq*. NEPA sets out procedures to be followed by federal agencies to ensure that the environmental effects of proposed actions are "adequately identified and evaluated." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989). "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. Pub. 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. Nat. Res. Def. Council, Inc.*, 462 U.S. 87, 97 (1983).

The Natural Gas Act designates the Commission as the "lead agency" for purposes of coordinating all applicable federal authorizations and complying with NEPA. *See* 15 U.S.C. § 717n(b)(1). In this case, the Department of Energy and several other federal

agencies served as "cooperating agencies"—*i.e.*, agencies that participate in the environmental analysis of the resource over which they have jurisdiction or special expertise. *See* Final Environmental Impact Statement ES-1 (Nov. 2019), R. 3619, JA ___.

II. THE COMMISSION'S REVIEW

A. An Overview of Liquefied Natural Gas

Natural gas liquefies when cooled to minus 260 degrees Fahrenheit, which in turn reduces its volume by 600 times. 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. The liquefied natural gas ("LNG") is then warmed to return it to a gaseous state—*i.e.*, regasified—before being sent into the pipeline network for delivery. *See* FERC, *Energy Primer: A Handbook of Energy Market Basics* 16 (Apr. 2020) (available at https://www.ferc.gov/sites/default/files/2020-06/energy-primer-2020_Final.pdf).

Historically, the United States has been an importer of liquefied natural gas. Starting in 2010, however, increased domestic production—driven by improvements in shale gas exploration and

extraction—led to numerous proposals to export liquefied natural gas. *Id*. at 17. As of March 2021, there are seven export terminals in operation, five under construction, and fifteen that have been approved but have not started construction. *See* https://www.ferc.gov/industries-data/natural-gas/overview/lng.

B. The Jordan Cove Terminal and Pacific Connector Pipeline Project

1. 2013- 2016 Applications and Denial

Jordan Cove Energy Project L.P. ("Jordan Cove") and Pacific Connector Gas Pipeline, LP ("Pacific Connector") filed applications with the Commission in 2013 for (1) authorization to site, construct and operate the Jordan Cove LNG export terminal and associated facilities (the "Terminal") under Natural Gas Act section 3, 15 U.S.C. § 717b, and (2) a certificate of public convenience and necessity to construct and operate the Pacific Connector Pipeline and associated facilities (the "Pipeline") under Natural Gas Act section 7, 15 U.S.C. § 717f. Authorization Order PP 5-6, JA ___-___; *Jordan Cove Energy Project, L.P.*, 154 FERC ¶ 61,190 (2016). During the proceeding on the 2013 applications, Pacific Connector did not conduct an open season for the

proposed pipeline capacity or submit agreements to support its application. *Id.* P 14.

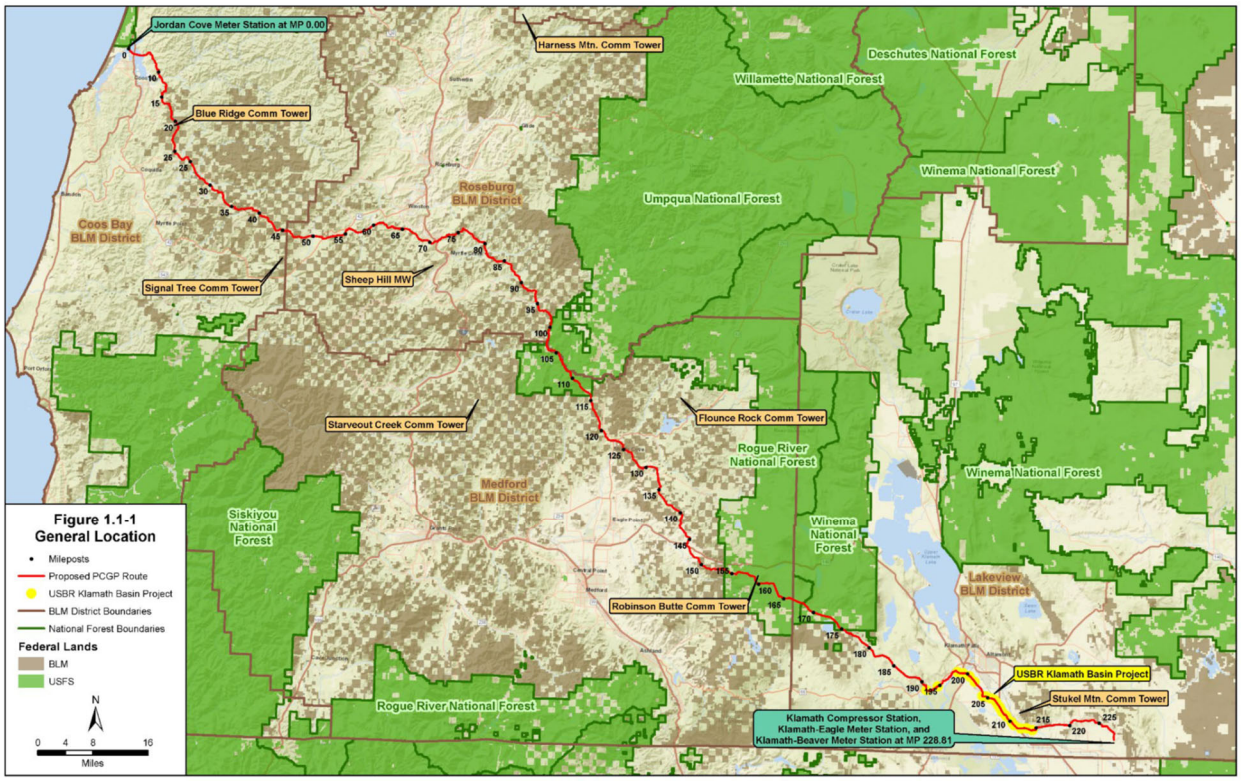
In March 2016, the Commission denied both applications, because the pipeline had "presented little or no evidence of need," and the record did not show that the export terminal could function without the pipeline. *Id.* PP 39-41, 46. However, the Commission's denial was without prejudice to the companies submitting new applications, if they could show a market need for the services in the future. *Id.* P 48.

2. 2017 Project Proposal

Jordan Cove and Pacific Connector filed new applications in September 2017, supported by a showing that the Pipeline and Terminal had entered into precedent agreements for 96 percent of the pipeline's capacity. As proposed, the 229-mile, 36-inch diameter Pacific Connector pipeline would originate at interconnections with existing pipeline systems in Klamath County, Oregon, and transport natural gas across parts of Jackson, Douglas, and Coos Counties to the Jordan Cove Terminal for liquefaction and export. Authorization Order PP 1-2, JA ___. In addition to liquefying the natural gas, the Terminal would be capable of storing and loading it onto ocean-going LNG vessels. *See*

id. PP 7-12, JA ___-___ (describing liquefaction, storage, and terminal facilities). The Terminal would be capable of processing a total maximum capacity of 7.8 million metric tons (equivalent to 395 billion cubic feet) per year of liquefied natural gas for export. *Id.* P 7, JA ___. Unlike in 2013, Jordan Cove and Pacific Connector submitted precedent agreements (supply contracts) for approximately 96 percent of the pipeline's capacity. *Id.* P 55-65, JA ___-___.

The following map shows the location of the proposed Terminal and Pipeline:



Environmental Impact Statement, 1-5, JA ___.

C. The Commission's Environmental Analysis

Jordan Cove and Pacific Connector participated in the Commission's pre-filing process. That process affords an opportunity for resource agencies, affected communities, and other stakeholders to learn about the Project and identify environmental issues for review prior to the filing of a formal application. *See* EIS at ES-2, JA ___. In March 2019, Commission staff issued a draft Environmental Impact Statement which addressed issues raised during the pre-filing period. Rehearing Order P 153, JA ___-___. Subsequently, Commission staff held four public comment sessions, and received 1,449 written comments regarding the draft Environmental Impact Statement from federal and state agencies, Native American tribes, organizations, and individuals. *Id.*

The final Environmental Impact Statement, issued in November 2019, analyzed the Project's potential impact upon various environmental resources and responded to all substantive environmental comments received on the draft impact statement. *Id.* P 154, JA ___. The Environmental Impact Statement concluded that construction and operation of the Project would result in some adverse

environmental impacts, but many would not be significant or would be reduced to less-than-significant levels with the implementation of required mitigation measures. *Id.* P 155, JA ___. The Project would, however, have significant impacts on certain resources, including localized impacts in Coos Bay and Coos County, and adverse impacts on certain threatened and endangered species. *Id.*

D. The Commission's Conditional Authorization Order

On March 19, 2020, the Commission issued a conditional authorization for the proposed Terminal under section 3 of the Natural Gas Act, 15 U.S.C. § 717b, and a conditional certificate of public convenience and necessity for the proposed Pipeline under section 7, *id.* § 717f. *See* Authorization Order P 3, JA ___. Applying the standard set out in Natural Gas Act section 3, 15 U.S.C. § 717b(a)—i.e., an application for the exportation of natural gas "shall" be approved unless the proposal "will not be consistent with the public interest"—the Commission determined that the siting, construction, and operation of the Terminal would not be inconsistent with the public interest. *Id.* PP 29-43, JA ___-___. The Commission explained that the Terminal "would have economic and public benefits, including benefits to the local

and regional economy and the provision of new market access for natural gas producers." *Id.* P 40, JA ___. The Terminal would be located on "primarily privately controlled land consisting of a combination of brownfield decommissioned industrial facilities, an existing landfill requiring closure, and open land," and "portions of the proposed site were previously used for disposal of dredged material." *Id.* Although the Terminal would have some adverse impacts, implementation of environmental mitigation measures required by the Commission would reduce most impacts to "less-than-significant levels." *Id.*

With respect to the Pipeline, the Commission found that precedent agreements between Pacific Connector and Jordan Cove for approximately 96 percent of the Pipeline's capacity adequately demonstrated market need for purposes of Natural Gas Act section 7. *Id.* P 65, JA ___. Addressing environmental concerns, the Commission concluded that, if constructed under the conditions established by the Commission and applicable law, the pipeline would be an environmentally acceptable action and consistent with the public interest. *Id.* PP 152-294, JA ___-___.

The Commission specified in the Authorization Order that no construction may occur until certain regulatory and environmental conditions are satisfied. Authorization Order P 192, JA ___ ("Pacific Connector and Jordan Cove will be unable to exercise the authorizations to construct and operate the projects until they receive all necessary authorizations . . . ."). In particular, Jordan Cove and Pacific Connector must obtain, prior to Project construction, state authorizations under the Coastal Zone Management Act, 16 U.S.C. § 1456(c)(3)(A), and the Clean Water Act, 33 U.S.C. § 1341(a)(1). *See* Envtl. Condition No. 11, JA ___ (construction, including "any tree-felling or ground-disturbing activities," may not proceed without written authorization from the Director of the FERC Office of Energy Projects, and requires documentation that Jordan Cove and Pacific Connector have obtained "all applicable authorizations required under federal law"); Envtl. Condition No. 27, JA ___ ("Jordan Cove and Pacific Connector shall not begin construction of the Project until they file with the [FERC] Secretary a copy of the determination of consistency with the Coastal Zone Management Plan issued by the State of Oregon.").

Commissioner (now Chairman) Glick dissented, expressing the view that the majority failed to adequately address adverse impacts of the Project, especially climate change impacts from greenhouse gas emissions.

E. The Rehearing Order

On rehearing, the Commission reaffirmed that its authorization was contingent on Jordan Cove and Pacific Connector obtaining necessary federal and state approvals, including authorizations required by the Coastal Zone Management Act, 16 U.S.C. § 1456(c)(3)(A), and Clean Water Act, 33 U.S.C. § 1341(a)(1). Rehearing Order PP 74-95, JA ___-___.

Also, as relevant here, the Commission rejected arguments that it erred in:

- Determining that the Pipeline was in the "public convenience and necessity" under Natural Gas Act section 7, 15 U.S.C. § 717f, despite being designed to transport liquefied natural gas for export (Rehearing Order PP 28-44, JA ___-___);
- Conditionally authorizing the Project prior to the issuance of necessary state approvals under the Clean Water Act, 33

U.S.C. § 1341(a)(1), and Coastal Zone Management Act, 16 U.S.C. § 1456(c)(3)(A) (Rehearing Order PP 74-95, JA ___-___), and prior to completion of certain cultural resource impact analyses (*id.* PP 149-58, JA ___-___);

- Rejecting both the "no action alternative" (*id.* P 103, JA ___-___) and an alternative that would require Jordan Cove to use waste heat to generate all electricity needed for the Terminal (*id.* P 119, JA ___-___);
- Assessing Project impacts with respect to the Southwest Oregon Regional Airport (*id.* PP 195-201, JA ___-___), wildfire risks relating to the Pipeline (*id.* PP 209-16, JA ___-___), and wetlands (*id.* PP 257-97, JA ___-___); and
- Concluding that the Commission could not determine the significance of the Project's greenhouse gas emissions (*id.* PP 242-56, JA ___-___).

Commissioner (now Chairman) Glick again dissented.

III. THE DEPARTMENT OF ENERGY'S REVIEW

Jordan Cove initially obtained authorizations from the Department of Energy to export (1) up to 438 billion cubic feet equivalent of natural gas per year to countries with which the United States has a free trade agreement, and (2) up to 292 billion cubic feet equivalent per year to non-free trade agreement countries. Rehearing Order P 6 & nn.12-13, JA ___-___ (citing *Jordan Cove Energy Project, L.P.*, DOE/FE Dkt. No. 11-127-LNG, Order No. 3041 (2011); and DOE/FE Dkt. No. 12-32-LNG, Order No. 3413 (2014)).

After the Commission denied Jordan Cove's 2013 application, and while Jordan Cove's and Pacific Connector's 2017 applications were pending before the Commission, Jordan Cove applied to the Department of Energy to amend the earlier export authorizations to adjust the quantities of authorized natural gas exports, and to "re-set the dates by which [Jordan Cove] must commence exports." Rehearing Order P 6, JA ___. In July 2018, the Department of Energy granted the requested amendment with respect to free trade agreement countries, permitting Jordan Cove to export up to 395 billion cubic feet of liquefied natural gas per year to free trade agreement countries for a 30-year

term (beginning on the earlier date of the first export or July 20, 2028). *Id.* P 6 & n.16, JA ___-___; *Jordan Cove Energy Project L.P.*, DOE/FE Dkt. No. 11-127-LNG, Order No. 3041-A (2018), *available at* https://fossil.energy.gov/ng_regulation/sites/ default/files/programs/ 3041-A_0.pdf. After the Commission's Rehearing Order issued, the Department of Energy granted the requested amendment with respect to non-free trade agreement countries, allowing Jordan Cove to export up to 395 billion cubic feet of liquefied natural gas per year for a 20-year term (beginning on the date when Jordan Cove commences natural gas exports from the Terminal). *Jordan Cove Energy Project L.P.*, DOE/FE Dkt. No. 12-32-LNG, Order No. 3413-A at 122 (2020), *available at* https://www.energy.gov/sites/default/files/2020/07/f76/3143a.pdf.[1]

In authorizing liquefied natural gas exports from the Terminal, the Department of Energy found, among other things, that Jordan Cove had "provided compelling evidence of the economic benefits associated

[1] The volumes authorized for export to free trade agreement countries and non-free trade agreement countries are not additive. Jordan Cove is only permitted to export the Project's authorized liquefaction capacity (395 billion cubic feet per year), regardless of where those exports may go. *Id.*

with the construction and operation of the proposed Terminal in Oregon." *Id.* at 95 (noting that Jordan Cove and Pacific Connector would invest a total of $9.8 billion to construct the Project in Oregon, with $2.88 billion of that total spent on local Oregon businesses). The Department of Energy also found that the natural gas exports would generate net economic benefits for the United States economy as a whole. *Id.* at 102-103. Moreover, natural gas exports contribute to an "efficient, transparent international market for natural gas with diverse sources of supply," which in turn, "provides both economic and strategic benefits to the United States and our allies." *Id.* at 106.

IV. POST-AUTHORIZATION DEVELOPMENTS

A. The Court's Denial of Landowners' Motion for Summary Vacatur or Stay of the Pipeline Certificate

After the petitions for review were filed, in July 2020, Landowners moved for summary vacatur, or for a stay pending judicial review, of the Commission's conditional authorization of the Pipeline. Mot. for Summary Vacatur or, In the Alternative, for a Stay of the Certificate, No. 20-1161 (July 6, 2020). Landowners challenged the Commission's conditional authorization, arguing that a pipeline carrying natural gas for export does not serve the "public convenience and necessity" under

Natural Gas Act section 7, 15 U.S.C. § 717f. *Id.* 3-15 (citing *City of Oberlin v. FERC*, 937 F.3d 599, 607-608 (D.C. Cir. 2019)). Alternatively, Landowners sought a stay of the certificate, arguing, among other things, that potential eminent domain actions during the pendency of the case would cause Landowners irreparable injury. Motion at 15-30.

The Commission and Respondent-Intervenors Jordan Cove and Pacific Connector filed responses. The Commission argued that summary vacatur was not warranted on the merits, and also noted that concerns regarding eminent domain proceedings were "hypothetical and not imminent." Respondent's Opp. to Mot. for Summary Vacatur or for a Stay of the Certificate 20 (Aug. 11, 2020). Respondent-Intervenors also opposed the motion, and confirmed that they had not "filed any condemnation complaints in any court to date." Intervenors' Opp. to Mot. for Summary Vacatur or for a Stay of the Certificate 3-4 (Aug. 11, 2020). The Court denied the motion, but specified that the denial was "without prejudice to renewal . . . in the event that actions to condemn petitioners' property become imminent." Per Curiam Order (Oct. 6, 2020).

B. Oregon's Coastal Zone Management Act Denial Upheld by the U.S. Secretary of Commerce

The Coastal Zone Management Act, 16 U.S.C. § 1456(c)(3)(A), provides that an applicant for a federal license to conduct an activity within or affecting a state's designated coastal zone must certify that the activity is consistent with the state's coastal management program. Further:

> No license or permit shall be granted by the Federal agency until the state . . . has concurred with the applicant's certification or until, by the state's failure to act, the concurrence is conclusively presumed, unless the Secretary [of Commerce], on his own initiative or upon appeal by the applicant, finds . . . that the activity is consistent with the objectives of this chapter or is otherwise necessary in the interest of national security.

Id.; *see also Mobil Oil Exploration & Producing Se., Inc. v. United States*, 530 U.S. 604, 610 (2000) ("If a [s]tate objects, the certification fails, unless the Secretary of Commerce overrides the [s]tate's objection.") (citing 16 U.S.C. § 1456(c)(3)(A)); *Del. Dep't of Nat. Res. & Envtl. Control v. FERC*, 558 F.3d 575, 576 (D.C. Cir. 2009) (same).

As the challenged orders explained, Oregon objected to the certification submitted by Jordan Cove and Pacific Connector under the Coastal Zone Management Act. Rehearing Order P 77, JA ___;

Authorization Order P 230-31, JA ___; *see also* Federal Consistency Determination, Oregon Dep't of Land Conservation & Development (Feb. 19, 2020), *available at* https://www.oregon.gov/lcd/OCMP/FCDocuments/FINAL-CZMA-OBJECTION_JCEP-DECISION_2.19.2020.pdf. Jordan Cove and Pacific Connector appealed Oregon's objection to the U.S. Secretary of Commerce; that appeal was pending at the time the Rehearing Order issued. *See* Rehearing Order PP 77-84, JA ___-___ (explaining that Project construction may be authorized if the Secretary of Commerce issues a decision overriding Oregon's objection) (citing 16 U.S.C. § 1456(c)(3)(A); Envtl. Condition No. 27, JA ___).

On February 8, 2021, after opening briefs in this case were filed, the Secretary of Commerce issued a decision denying the Jordan Cove and Pacific Connector appeal and sustaining Oregon's objection. Commerce Decision (Feb. 8, 2021), *available at* https://coast.noaa.gov/data/czm/consistency/appeals/fcappealdecisions/mediadecisions/jordancove.pdf.[2] Because the Secretary of Commerce has declined to override

[2] The National Oceanic and Atmospheric Administration administers the Coastal Zone Management Act within the Department of Commerce, including administering and deciding consistency

Oregon's objection under the Coastal Zone Management Act, the Commission cannot authorize project construction to proceed. 16 U.S.C. § 1456(c)(3)(A); Rehearing Order P 75, JA ___; Envtl. Condition Nos. 11 & 27, JA ___, ___.

C. The Commission Finds that Oregon Did Not Waive Its Clean Water Act Certification Authority

The challenged orders are also contingent on the State of Oregon's issuance of a water quality certification under section 401 of the Clean Water Act, 33 U.S.C. § 1341(a)(1). Authorization Order P 192, JA ___; Envtl. Condition No. 11, JA ___. Clean Water Act section 401 provision specifies that any applicant for a federal license to conduct an activity that "may result in any discharge into the navigable waters" of the United States must obtain a water quality certification from the State where the discharge will originate. 33 U.S.C. § 1341(a)(1). "No [federal] license or permit shall be granted until the [state] certification required by this section has been obtained or has been waived . . . ." *Id.* States have "a reasonable period of time (which shall not exceed one year) after receipt of [a] request" for water quality certification to grant

---

appeals. Department Organization Order 10-15 § 3.01.u, *available at* https://www.osec.doc.gov/opog/dmp/doos/doo10_15.html.

or deny the request; if a state "fails or refuses to act on a request for certification" within this time period, the certification requirement is waived. *Id.*; *see also Hoopa Valley Tribe v. FERC*, 913 F.3d 1099 (D.C. Cir. 2019) (state water quality certification "serves as a precondition" to FERC license issuance).

Oregon denied water quality certification for the Project, without prejudice, in May 2019. *See* Rehearing Order P 87, JA ___; Decision Letter, Oregon Dep't of Envtl. Quality 3 (May 6, 2019), *available at* https://www.oregon.gov/deq/FilterDocs/jcdecletter.pdf ("den[ying] the request for [section] 401 [water quality certification] for the Project" because Oregon "does not have a reasonable assurance that the construction and operation of the Project will comply with applicable Oregon water quality standards . . . ."); Evaluation and Findings Report: Section 401 Water Quality Certification for the Jordan Cove Energy Project (May 2019), *available at* https://www.oregon.gov/deq/FilterDocs/jcevalreport.pdf.

Subsequently, Jordan Cove and Pacific Connector filed a petition for declaratory order with the Commission, seeking a finding that Oregon waived its Clean Water Act section 401 certification authority

by failing to act within one year of receipt of the application. In January 2021, the Commission denied the petition, finding that Oregon had not waived its certification authority. *Pac. Connector Gas Pipeline, LP, Jordan Cove Energy Project L.P.*, 174 FERC ¶ 61,057 PP 22-33 (2021) (agreeing with Oregon that the application submitted to the State was procedurally improper; because the application was not specific to Clean Water Act section 401, it did not trigger the one-year clock for state action); *see also* Oregon Br. 19. In the absence of water quality certification, the Commission cannot authorize project construction to proceed. *See* 33 U.S.C. § 1341(a)(1); Envtl. Condition 11, JA ___.

D. Company Statements

Following these developments, Pembina Pipeline Corporation ("Pembina"), the parent company of Jordan Cove and Pacific Connector, announced that, "[i]n light of current regulatory and political uncertainty, Pembina recognized an impairment on its investment in Jordan Cove and is evaluating the path forward." 2020 Annual Report 19 (Feb. 25, 2021), Pembina Pipeline Corp., *available at* https://www.pembina.com/getattachment/ 201d5989-d79b-4a25-8311-

ceb427fa7cb1/q4-2020-annual-report-final.pdf. The company further explained, "The impairment charge of $349 million ($258 million net of tax) includes all previously capitalized amounts related to Jordan Cove, except for land with a recoverable carrying amount of $21 million which approximates its fair value." *Id.* at 20.

In addition, Respondent-Intervenors Jordan Cove and Pacific Connector have filed a motion asking the Court to hold these cases in abeyance because the companies intend to "pause the development of the . . . Project while they assess the impact of recent regulatory decisions involving denial of permits or authorizations necessary for the Project to move forward." Mot. of Respondent-Intervenors to Suspend Merits Briefing Schedule and Hold Cases in Abeyance 1-2, Nos. 20-1161, *et al.* (Apr. 22, 2021).

* * *

The status of the regulatory authorizations described above are set out in the chart below:

Jordan Cove and Pacific Connector Pipeline Project: Status of Relevant Authorizations		
Department of Energy	**FERC**	**State of Oregon**
Exports to Free Trade Agreement countries approved under Natural Gas Act section 3, 15 U.S.C. § 717b (July 20, 2018) Exports to non-Free Trade Agreement countries approved (July 6, 2020)	Terminal and Pipeline conditionally authorized pursuant to Natural Gas Act sections 3 and 7, 15 U.S.C. §§ 717b, 717f (March 19, 2020, *reh'g denied*, May 22, 2020) Construction not authorized: project cannot proceed unless State grants previously-denied authorizations under the Coastal Zone Management Act and Clean Water Act	Coastal Zone Management Act, 16 U.S.C. § 1456(c)(3)(A) • State objected to consistency certification (Feb. 19, 2020) • U.S. Secretary of Commerce issued order sustaining state objection (Feb. 8, 2021) Clean Water Act, 33 U.S.C. § 1341(a)(1) • State issued order denying certification (May 6, 2019) • FERC issued order finding state had not waived Clean Water Act certification authority (Jan. 19, 2021)

SUMMARY OF ARGUMENT

In light of recent developments, the Jordan Cove and Pacific Connector Project is at a standstill. In these circumstances, Petitioners have not demonstrated the constitutional minimum for Article III standing—a concrete and particularized injury that is actual or imminent, rather than conjectural or hypothetical. Moreover, because it is entirely speculative whether the Project will ever go forward, the petitions do not present claims that are now ripe for review. Accordingly, as discussed below, the petitions should be dismissed for lack of a justiciable controversy or held in abeyance.

On the merits, Petitioners do not challenge the Commission's conditional authorization of the Terminal under Natural Gas Act section 3, 15 U.S.C. § 717b, which sets forth a presumption in favor of authorizing facilities supporting the export of natural gas to free trade agreement countries. However, Petitioners challenge the Commission's determination that the Pipeline—which is designed to supply natural gas to the Terminal—was required in the "public convenience and necessity" under Natural Gas Act section 7, 15 U.S.C. § 717f.

The Commission concluded that certification of the Pipeline was appropriate because it would support the public interest by exporting natural gas to free trade agreement countries, and because the Pipeline would provide domestic public benefits. The Commission's interpretation and application of Natural Gas Act section 7, 15 U.S.C. § 717f, was reasonable and entitled to deferential review. Moreover, the Commission's conditional certification—contingent on the receipt of required state authorizations and completion of certain cultural resource analyses—is entirely consistent with court precedent and the agency's practice.

Finally, the Commission's comprehensive environmental review encompassed, among other things, project alternatives, potential impacts on airport operations, potential wetlands impacts, wildfire risks, and greenhouse gas emissions. The Commission's assessment of these issues satisfied NEPA and should be upheld.

ARGUMENT

I. THE PETITIONS SHOULD BE DISMISSED FOR LACK OF A JUSTICIABLE CONTROVERSY

A. Petitioners Have Not Established A Concrete and Particularized Injury Sufficient to Support Article III Standing

"Article III demands that an 'actual controversy' persist throughout all stages of litigation." *Va. House of Delegates v. Bethune-Hill*, 139 S. Ct. 1945 (2019) (citation omitted). "[W]hen standing is questioned by a court or an opposing party, . . . the litigant must explain how the elements essential to standing are met" in order to "cross the standing threshold." *Id.* (citation omitted); *see also Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) ("irreducible constitutional minimum" for standing requires (1) a "concrete and particularized" injury, (2) that is fairly traceable to the challenged orders, and (3) that is likely to be redressed by a favorable decision).

The challenged orders conditionally authorize the Project—that is, unless the specified conditions are met, the Project is not authorized to go forward. Among other things, and as relevant here, Project authorization is conditioned on the receipt of state authorizations under the Coastal Zone Management Act, 16 U.S.C. § 1456(c)(3)(A), and the

Clean Water Act, 33 U.S.C. § 1341(a)(1). *See* Rehearing Order P 75, JA ___; Authorization Order P 192, JA ___; Envtl. Condition Nos. 11 & 27, JA ___, ___. As described above, Oregon has denied the required Coastal Zone Management Act consistency certification. *See supra* pp. 23-24; Federal Consistency Determination, Oregon Dep't of Land Conservation & Development (Feb. 19, 2020). Although the U.S. Secretary of Commerce may override a State's objection—thus satisfying the Coastal Zone Management Act, 16 U.S.C. 1456(c)(3)(A) (*see* Envtl. Condition 27, JA ___)—the Secretary of Commerce here sustained Oregon's denial after opening briefs were filed in this case. *See supra* pp. 24-25; Commerce Decision (Feb. 8, 2021).

Additionally, Oregon has denied Clean Water Act section 401 water quality certification for the Project. Decision Letter, Oregon Dep't of Envtl. Quality 3 (May 6, 2019). And the Commission has rejected Jordan Cove and Pacific Connector's argument that the State waived its section 401 certification authority by acting beyond the one-year timeframe for state action. 174 FERC ¶ 61,057, PP 22-33.

Unless these regulatory obstacles are removed, the Project cannot proceed to construction. *See* 16 U.S.C. § 1456(c)(3)(A), 33 U.S.C.

§ 1341(a)(1); Rehearing Order P 75, JA ___; Authorization Order P 192, JA ___, Envtl. Condition Nos. 11 & 27, JA ___, ___. In these circumstances, Petitioners cannot establish an "injury in fact" that is "concrete and particularized" and "actual or imminent," rather than "conjectural or hypothetical." *Lujan*, 504 U.S. at 560-61; *see also Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1549 (2016) ("Article III standing requires a concrete injury even in the context of a statutory violation. . . . [A] bare procedural violation, divorced from any concrete harm, [cannot] satisfy the injury-in-fact requirement of Article III."); *Clapper v. Amnesty Int'l USA*, 133 S. Ct. 1138, 1147 (2013) ("[W]e have repeatedly reiterated that threatened injury must be *certainly impending* to constitute injury in fact, and that allegations of *possible* future injury are not sufficient.") (citation and internal quotation marks omitted, emphasis in original).

Petitioners' briefs cite only potential future injuries that may arise *if* the Project proceeds to construction. *See* Landowners Br. 20-21; Oregon Br. 11-15; Tribes Br. 7. Oregon, in particular, has not established any actual and imminent injury for Article III purposes, because its own denials of necessary authorizations have brought the

Project to a standstill. *See Del. Dep't of Nat. Res.*, 558 F.3d at 578-79. In *Delaware*, the state made effectively the same argument Oregon makes here—i.e., it challenged the Commission's issuance of a conditional authorization for a liquefied natural gas terminal, arguing that the Commission violated the Coastal Zone Management Act and Clean Air Act by issuing the conditional authorization prior to the state's issuance of required authorizations. *Id.* This Court held that Delaware lacked standing to challenge this alleged procedural violation: "Delaware's difficulty is that an alleged procedural injury does not confer standing unless the procedure affects a concrete substantive interest." *Id.* (citing *Lujan*, 504 U.S. at 573 n.8). Delaware's "obvious . . . substantive interest is the preventing of the construction of the project," and its "alleged procedural injury has no bearing" on this interest, "because under FERC's order the project cannot be resurrected without Delaware's approval." *Id.* at 579. The same is true here. Because the U.S. Secretary of Commerce has sustained the State's objection under the Coastal Zone Management Act—and the Commission has determined that Oregon has not waived its Clean

Water Act section 401 authority—the Project cannot proceed without Oregon's approval.

Landowners raised eminent domain concerns relating to the Authorization Order (Landowners Br. 20-21), but these concerns are now entirely speculative. Jordan Cove and Pacific Connector have announced—in a filing in this Court—that they are "pausing" development of the Project. Respondent-Intervenors Mot. P 11. Moreover, the companies "have not filed any condemnation actions to date, and will commit not to file any such actions during the development pause and abeyance." Respondent-Intervenors Mot. P 11; *see also id.* P 12 ("no construction activities will be conducted and no condemnation actions will be filed" during the development pause).

As the Commission explained, "Pacific Connector will not be allowed to construct any facilities on [any property subject to eminent domain] unless and until a court authorizes acquisition of the property . . . and there is a favorable outcome on all outstanding requests for necessary approvals." Authorization Order P 101, JA ___. Specifically, "[b]ecause Pacific Connector may go so far as to survey and designate the bounds of an easement but no further, e.g., *it cannot cut*

vegetation or disturb ground pending receipt of any necessary approvals, any impacts on landowners will be minimized." *Id.* (emphasis added); Rehearing Order P 58, JA ___ (same). In these circumstances, Landowners cannot demonstrate any actual or imminent harm arising from the conditional authorizations at issue here. Because courts are "reluctant to endorse standing theories that require guesswork as to how independent decisionmakers will exercise their judgment," such speculation is insufficient to support Article III standing. *Clapper*, 133 S. Ct. at 1150; *see also New York Reg'l Interconnect v. FERC*, 634 F.3d 581, 587 (D.C. Cir. 2011) (no standing where claim of injury "stacks speculation upon hypothetical upon speculation").

B. In the Alternative, the Petitions Should Be Dismissed, or Held in Abeyance, Because Petitioners' Challenges Are Not Ripe for Immediate Review

"A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all." *Texas v. United States*, 523 U.S. 296, 300 (1998) (citation and internal quotation marks omitted). The Court applies a two-part analysis to evaluate ripeness: (1) "the fitness of the issues for judicial decision," and (2) "the hardship to the parties of withholding court

consideration." *Id.* at 300-301 (quoting *Abbott Labs. v. Gardner*, 387 U.S. 136, 148-49 (1967)).

As this Court has explained—in a case substantially similar to this one—the ripeness doctrine is designed to "prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements" and to "protect the expenditure of judicial resources," consistent with the principle that "Article III courts should not make decisions unless they have to." *Devia v. Nuclear Regulatory Comm'n*, 492 F.3d 421, 422 (D.C. Cir. 2007). In *Devia*, petitioners challenged a license issued by the Nuclear Regulatory Commission, permitting the construction and operation of a spent nuclear fuel storage facility in Utah. After the agency approved the license, the Interior Department's Bureau of Land Management and Bureau of Indian Affairs denied needed authorizations. In light of the denials, the Court found the challenges to be unripe and directed that the case be held in abeyance, "[b]ecause it is speculative whether the project will ever be able to proceed." *Id.*

Applying the two-part ripeness inquiry, the Court found that the issues presented were not fit for immediate judicial review. The Court

explained, "when an agency decision may never have 'its effects felt in a concrete way by the challenging parties,' the prospect of entangling ourselves in a challenge to such a decision is an element of the fitness determination . . . ." *Id.* at 424 (quoting *Abbott Labs.*, 387 U.S. at 148-49). In particular, "[r]esolution of the petitioners' challenge to the licensing of the storage facility at issue here has all the earmarks of a decision that 'we may never need to' make," because the Bureau of Land Management and Bureau of Indian Affairs denials "appear to block the activity—construction and operation of the facility—that petitioners . . . contend will concretely affect them." *Id.* at 425-26 (quoting *Nat'l Treasury Employees Union v. United States*, 101 F.3d 1423, 1431 (D.C. Cir. 1996)). The Court went on to note that the project sponsors (intervenors in the case) had announced plans to challenge the denials that blocked the project from proceeding. However, intervenors had not yet filed any challenge, and, "even if the intervenors do seek review, the ultimate result 'may not occur as [they] anticipate[].'" *Id.* (quoting *Texas*, 523 U.S. at 300). "Put another way, we 'find it too speculative whether' the validity of the [Nuclear Regulatory Commission] license is

a problem that 'will ever need solving.'" *Id.* (quoting *Texas*, 523 U.S. at 302).

With respect to the hardship prong, the Court in *Devia* stated that, "[i]n order to outweigh the institutional interests in the deferral of review, the hardship to those affected by the agency's action must be immediate and significant." *Id.* at 428. The Court found that no party, including intervenors, had demonstrated such immediate and significant hardship as a result of deferring review. *Id.* ("'[M]ere uncertainty as to the validity of a legal rul[ing] [does not] constitute[] a hardship for purposes of the ripeness analysis.'") (quoting *Nat'l Park Hospitality Ass'n v. Dep't of Interior*, 538 U.S. 803, 811 (2003)).

Here, as in *Devia*, the petitions do not present concrete issues fit for immediate judicial review. Oregon's denials "block the activity—construction and operation of the facility—that petitioners . . . contend will concretely affect them," and "it is speculative whether the project will ever be able to proceed." *Id.* at 422, 425-26; *see also Town of Stratford v. Fed. Aviation Admin.*, 285 F.3d 84 (D.C. Cir. 2002) (holding challenge to approved runway renovation plan to be unripe, where the Army had not yet decided to cede control of property needed to

implement approved plan); *City of Fall River v. FERC*, 507 F.3d 1, 6-7 (1st Cir. 2007) (finding FERC's conditional authorization of liquefied natural gas terminal and pipeline unripe for review, where other agencies had not issued necessary approvals and thus, project "may well never go forward").

Nor will petitioners suffer any hardship in the absence of immediate judicial review. As explained above, the Commission cannot—and will not—authorize construction in light of the denials of required authorizations. *See supra* p. 16, 36-37; Authorization Order P 101, JA ___ (companies "cannot cut vegetation or disturb ground pending receipt of any necessary approvals"). Moreover, Jordan Cove and Pacific Connector now have paused development of the Project and have confirmed that "no construction activities will be conducted and no condemnation actions will be filed" during the development pause. *See supra* pp. 28, 36; Respondent-Intervenors Mot. PP 11-12.

In any event, this Court has indicated that it is willing to consider extraordinary relief, even in the absence of state authorizations necessary to allow for construction of the Project, if the companies commence any eminent domain proceedings. *See supra* p. 22

(explaining Oct. 6, 2020 denial of motion for summary vacatur or stay "without prejudice to renewal of the stay motion in the event that actions to condemn petitioners' property become imminent").

In these circumstances, petitioners will not suffer hardship as a result of deferring judicial review.

II. STANDARD OF REVIEW

If the Court proceeds to the merits, the Commissions' action in approving the Project is reviewed 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*, 136 S. Ct. 760, 782 (2016). Rather, the court must uphold the Commission's determination "if the agency has examined the relevant considerations and articulated a satisfactory explanation for its action, including a rational connection between the facts found and the choice made." *Id.* (internal quotation marks omitted).

Because the grant or denial of a certificate under sections 3 and 7 of the Natural Gas Act, 15 U.S.C. §§ 717b, 717f, is within the

Commission's discretion, the Court does not substitute its judgment for that of the Commission. *See Myersville Citizens for a Rural Cmty. v. FERC*, 783 F.3d 1301, 1308 (D.C. Cir. 2015) ("the grant or denial of a Section 7 certificate of public convenience and necessity is a matter peculiarly within the discretion of the Commission"); *Pub. Serv. Comm'n v. FERC*, 777 F.2d 31, 35 (D.C. Cir. 1985) ("We have described the discretion to grant permits entrusted to the administrative agency under section 3 as 'elastic' – even more flexible than the discretion afforded to the administrative authority under section 7."). The Court evaluates only whether the Commission considered relevant factors and whether there was a clear error of judgment. *Myersville*, 783 F.3d at 1308; *W. Va. Pub. Serv.*, 681 F.2d at 859.

The arbitrary and capricious standard also applies to NEPA challenges. *Nevada v. Dep't of Energy*, 457 F.3d 78, 87 (D.C. Cir. 2006); *see also Cmtys. Against Runway Expansion, Inc. v. FAA*, 355 F.3d 678, 689 (D.C. Cir. 2004) (arbitrary and capricious standard applied to environmental justice analysis). "[T]he court's role is 'simply to ensure that the agency has adequately considered and disclosed the environmental impact of its actions and that its decision is not arbitrary

or capricious.'" *Nat'l Comm. for the New River, Inc. v. FERC*, 373 F.3d 1323, 1327 (D.C. Cir. 2004) (quoting *Balt. Gas & Elec.*, 462 U.S. at 97-98).

The Commission's environmental analysis is subject to a "rule of reason" standard, *Minisink Residents for Envtl. Pres. & Safety v. FERC*, 762 F.3d 97, 112 (D.C. Cir. 2014), and the Court has consistently declined to "flyspeck" that analysis, *City of Boston Delegation v. FERC*, 897 F.3d 241, 251 (D.C. Cir. 2018). "[A]s long as the agency's decision is fully informed and well-considered, it is entitled to judicial deference and a reviewing court should not substitute its own policy judgment." *Nat. Res. Def. Council, Inc. v. Hodel*, 865 F.2d 288, 294 (D.C. Cir. 1988) (internal quotation marks omitted).

III. THE COMMISSION APPROPRIATELY FOUND THAT THE PIPELINE WOULD SERVE THE PUBLIC CONVENIENCE AND NECESSITY UNDER NATURAL GAS ACT SECTION 7

Under the Natural Gas Act, the Commission is "the guardian of the public interest" and is vested with a "wide range of discretionary authority" when reviewing natural gas infrastructure projects. *FPC v. Transcon. Gas Pipe Line Corp.*, 365 U.S. 1, 7 (1961); *see also Columbia Gas Transmission Corp. v. FERC*, 750 F.2d 105, 112 (D.C. Cir. 1984)

(Commission is "vested with wide discretion to balance competing equities against the backdrop of the public interest").

Petitioners do not challenge the Commission's determination under Natural Gas Act section 3, 15 U.S.C. § 717b, that the siting, construction, and operation of the proposed Jordan Cove terminal would not be inconsistent with the public interest. Authorization Order PP 29-43, JA ___-___; Rehearing Order PP 45-48, JA ___-___. However, Landowners challenge the Commission's determination that the proposed Pacific Connector pipeline would serve the "public convenience and necessity," thus warranting certification under Natural Gas Act section 7, 15 U.S.C. § 717f(c). Landowners Br. 21-47.

A. The Commission Reasonably Evaluated Project Need Consistent with this Court's Precedent and the Commission's Certificate Policy Statement

Natural Gas Act section 7(e) grants the Commission broad authority to determine whether a proposed natural gas facility "is or will be required by the present or future public convenience and necessity." 15 U.S.C. § 717f(e). The Commission evaluates proposals

for new pipeline facilities under its Certificate Policy Statement,[3] which establishes criteria for determining whether a proposed project is needed and the process by which public benefits are balanced against the potential adverse consequences. Authorization Order P 52-53, JA ___. Here, the Commission found that there was market demand for the Pipeline, demonstrated by precedent agreements between Jordan Cove and Pacific Connector for approximately 96 percent of the Pipeline's capacity. *Id.* PP 59-65, JA ___-___.

Landowners challenge the Commission's finding of market need because Jordan Cove and Pacific Connector are affiliated companies. Landowners Br. 38-44. But the Commission's finding of market need is consistent with this Court's precedent and the agency's prior practice. As the Commission explained, so long as a precedent agreement is "long term and binding," it "do[es] not distinguish between pipelines'

---

[3] *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Policy Statement). The Commission is currently examining potential revisions to its approach under the currently effective Certificate Policy Statement. *Certification of New Interstate Natural Gas Facilities,* 163 FERC ¶ 61,042 (2018) and 174 FERC ¶ 61,125 (2021).

precedent agreements with affiliates or independent marketers in establishing market need for a proposed project." Rehearing Order P 43, JA ___. This is because "[a]ffiliation with a project sponsor does not lessen a shipper's need for capacity and its contractual obligation to pay for its subscribed service." *Id.* The Court has upheld this rationale. *See City of Oberlin*, 937 F.3d at 605 (rejecting argument that precedent agreements with affiliate cannot support finding of market need); *Appalachian Voices v. FERC*, No. 17-1271, 2019 WL 847199, *1 (D.C. Cir. Feb. 19, 2019) (per curiam) (unpublished) (upholding Commission's finding of market need based on affiliate precedent agreements for 100 percent of pipeline's capacity, because Commission "reasonably explained that '[a]n affiliated shipper's need for new capacity and its obligation to pay for such service under a binding contract are not lessened just because it is affiliated with the project sponsor'") (quoting *Mountain Valley Pipeline LLC*, 161 FERC ¶ 61,043 (2017)).

Moreover, contrary to Landowners' assertion, the Commission's finding of market need here does not represent a departure from its 2016 denial of the then-proposed Jordan Cove and Pacific Connector project (*see supra* pp. 10-11), or its decision in *Independence Pipeline*

Co., 89 FERC ¶ 61,283 (1999). Landowners Br. 41, 43-44. As the Commission explained, "here, unlike either the *Independence* or Jordan Cove/Pacific Connector 2016 proceedings, Pacific Connector's current application included signed precedent agreements, including a long-term precedent agreement with Jordan Cove for 96% of the Pacific Connector Pipeline's capacity, something we find significant, and sufficient, evidence of demand for the project." Rehearing Order P 33, JA ___; Authorization Order P 63, JA ___; *see also* 154 FERC ¶ 61,190, P 48 (denying 2016 applications without prejudice, if companies could show a market need in the future).

B. The Commission Reasonably Balanced the Benefits of the Pipeline with Potential Adverse Impacts

Landowners contend that the Commission failed to adequately weigh the public benefits of the Pipeline with the adverse impacts on landowners and the environment. Landowners Br. 44-47. But the Commission reasonably explained its determination that the public benefits of the Pipeline outweigh adverse impacts, under an established balancing test set forth in the Commission's Certificate Policy Statement. Rehearing Order PP 62-65, JA ___-___; Authorization Order PP 52-53, 91-94, JA ___-___, ___-___.

First, the Commission explained that the "Certificate Policy Statement's balancing of adverse impacts and public benefits is an economic test, not an environmental analysis." Rehearing Order P 63, JA ___; Authorization Order P 92, JA ___ (same). "Only when the benefits outweigh the adverse effects on the economic interest will the Commission proceed to consider the environmental analysis where other interests are addressed." Rehearing Order P 63, JA ___; *see also Fla. Gas Transmission Co. v. FERC*, 604 F.3d 636, 649 (D.C. Cir. 2010) (describing Commission's balancing analysis under Certificate Policy Statement).

Under its traditional balancing approach, the Commission determined that "the benefits the Pacific Connector Pipeline will provide outweigh the adverse effects on economic interests." Authorization Order P 94, JA ___. Here, the Commission found that there was market demand for the Pipeline, demonstrated by precedent agreements for 96 percent of its capacity. *Id.* P 65, JA ___. That capacity would enable the transport of natural gas to the Terminal, where it would be liquefied for export. *Id.* P 94, JA ___. Such transportation offers numerous benefits, including "contributing to the

development of the gas market . . . ; adding new transportation options for producers, shippers, and consumers; boosting the domestic economy and the balance of international trade; and supporting domestic jobs . . . ." Rehearing Order PP 40-42, JA ___-___; *see also* Authorization Order P 85, JA ___ (citing benefits to natural gas producers in the Rocky Mountain production area).

On the other side of the balance, the Commission found that the Pipeline "will not have any adverse impacts on existing customers, or other pipelines and their captive customers." Authorization Order PP 88, 94, JA ___, ___. The Commission also noted that "Pacific Connector has taken steps to minimize adverse impacts on landowners and communities." *Id.* PP 89-90, 94, JA ___-___, ___. However, the Commission acknowledged that development of the Project would not be without costs. Rehearing Order P 64, JA ___ (citing environmental and community impacts analysis in Environmental Impact Statement). Ultimately, the Commission concluded that, on balance, the Pipeline—if constructed and operated in compliance with numerous mitigation conditions—would be environmentally acceptable "considering the

public benefits of the project," and thus "required by the public convenience and necessity." *Id.*

C. The Commission Reasonably Determined that the Destination of the Gas Did Not Disqualify the Pipeline from Certification Under Natural Gas Act Section 7

Citing *City of Oberlin*, 937 F.3d at 606-607, Landowners contend the Commission erred in issuing a Natural Gas Act section 7 certificate of public convenience and necessity for a pipeline designed to transport natural gas to a terminal for export. Landowners Br. 22-38. *City of Oberlin* does not support Landowners' position.

In *City of Oberlin*, the Court held, with respect to orders approving another pipeline proposal, that the Commission "never explained why it is lawful to credit demand for export capacity in issuing a Section 7 certificate to an interstate pipeline." 937 F.3d at 606. Here, by contrast, the Commission fully explained its basis for determining that the Pipeline, designed to carry natural gas to an export terminal, serves the public convenience and necessity, thus justifying issuance of a section 7 certificate. Rehearing Order PP 36-44, JA ___-___; Authorization Order PP 81-87, JA ___-___; *see also City of Oberlin*, 937 F.3d at 611 (deciding not to vacate remanded certificate

order because "we find it plausible that the Commission will be able to supply the explanations required").

First, there is no basis for Landowners' suggestion that gas transported over the pipeline does not constitute "interstate commerce" because it is destined for export. *See* Landowners Br. 22-26. As the orders explained, the proposed Pacific Connector pipeline would "provide additional capacity to transport gas out of the Rocky Mountain production area," and "one of the Pacific Connector Pipeline's primary interconnects, Ruby Pipeline, 'extend[s] from Wyoming to Oregon, delivering gas from the Rocky Mountain production area to west coast markets.'" Rehearing Order P 41, JA ___. *Contrast Border Pipe Line Co. v. FPC*, 171 F.2d 149, 151 (D.C. Cir. 1948) (Prettyman, J.) (Federal Power Commission lacked jurisdiction to regulate a pipeline where "[t]he operation . . . is wholly local, and it is only because of petitioner's sales for foreign commerce that the Commission seeks to control all its activities").

As the Commission explained, nothing in the text of the Natural Gas Act—and no court precedent—dictates that the Commission must exclude exports from its consideration of whether a proposed pipeline

serves the public convenience and necessity. Rehearing Order P 38, JA ___. Natural Gas Act section 7(e) "requires the Commission to issue a certificate if the Commission finds that the applicant's proposal 'is or will be required by the present or future public convenience and necessity.'" Rehearing Order P 38 (quoting 15 U.S.C. § 717f(e)). "The courts have stated that the Commission must consider 'all factors bearing on the public interest.'" *Id.* (quoting *Atl. Refining Co. v. Pub. Serv. Comm'n of N.Y.*, 360 U.S. 378, 391 (1959)). "Petitioners cite no precedent, and we are aware of none, to suggest that the Commission should exclude Pacific Connector's precedent agreements from that broad assessment." *Id.*

Congress directed in Natural Gas Act section 3 that natural gas exports to "a nation with which there is a free trade agreement . . . shall be deemed to be consistent with the public interest." Rehearing Order P 39, JA ___ (quoting 15 U.S.C. § 717b(c)). This Court has held that this language "sets out a general presumption" in favor of authorizing export-related facilities. *EarthReports, Inc. v. FERC*, 828 F.3d 949, 953 (D.C. Cir. 2016). While Natural Gas Act section 3, 15 U.S.C. § 717b, is not directly implicated by Pacific Connector's application under Natural

Gas Act section 7, 15 U.S.C. § 717f, the Commission found that the presumption helps "inform [its] determination that the proposed pipeline is in the public convenience and necessity because it will support the public interest of exporting natural gas to [free trade agreement] countries." Rehearing Order P 39, JA ___. In particular, the Commission found that "it is permissible . . . to consider precedent agreements with [liquefied natural gas] export facilities as one of the factors bearing on the public interest in [the Commission's] public convenience and necessity determination." *Id.*

Moreover, on the record before it, the Commission found that the Pipeline would provide domestic public benefits. The Commission explained that the Pipeline would "provide additional capacity to transport gas out of the Rocky Mountain production area," and noted that "one of the [Pipeline]'s primary interconnects, Ruby Pipeline, 'extend[s] from Wyoming to Oregon, delivering gas from the Rocky Mountain production area to west coast markets.'" Rehearing Order 41, JA ___. "We view transportation service for all shippers as providing domestic public benefits, and do not weigh various prospective end uses differently for the purpose of determining need." *Id.* P 40, JA __

(describing domestic public benefits).

The Commission's interpretation of the scope of the factors it may consider in making a public interest determination under Natural Gas Act section 7 is entitled to deference under *Chevron U.S.A. Inc. v. Nat. Res. Defense Council, Inc.*, 467 U.S. 837, 842-43 (1984). *See, e.g.*, *Myersville*, 783 F.3d at 1308 ("Because the grant or denial of a Section 7 certificate of public convenience and necessity is a matter peculiarly within the discretion of the Commission, this court does not substitute its judgment for that of the Commission.") (citations and internal quotation marks omitted); *Associated Gas Distributors v. FERC*, 824 F.2d 981, 1001 (D.C. Cir. 1987) (where Congress granted Commission "broad power" to implement provision of Natural Gas Act, "*Chevron* binds us to defer to Congress's decision to grant the agency, not the courts, the primary authority and responsibility to administer the statute").

The Commission's findings concerning the public benefits of the Pipeline are likewise entitled to deference. *See Minisink*, 762 F.3d at 111 (Commission "enjoys broad discretion to invoke its expertise in balancing competing interests and drawing administrative lines"); *FPC*

v. Transcontinental Gas Pipe Line Corp., 365 U.S. 1, 29 (1961) ("[A] forecast of the direction in which the future public interest lies necessarily involves deductions based on the expert knowledge of the agency.").

IV. THE COMMISSION'S CONDITIONAL AUTHORIZATION OF THE PROJECT, PRIOR TO OTHER NEEDED AUTHORIZATIONS, IS PERMISSIBLE UNDER ESTABLISHED LAW

A. The Commission Appropriately Issued Conditional Authorizations for the Project, Dependent on the Receipt of Other Necessary Authorizations

Oregon argues that the Commission violated the Clean Water Act, 33 U.S.C. § 1341(a)(1), and Coastal Zone Management Act, 16 U.S.C. § 1456(c)(3)(A). Oregon Br. 16-27. These arguments are meritless. As the Commission noted (Rehearing Order PP 75-95, JA ___-___), the Court has upheld the agency's practice of issuing conditional authorizations (with final construction approval contingent on the satisfaction of specified regulatory and environmental conditions) on multiple occasions. *See Appalachian Voices*, 2019 WL 847199, at *1 (rejecting arguments that FERC violated the Natural Gas Act by "issuing the certificate subject to conditions precedent" because 15 U.S.C. § 717f(e) "expressly provides that FERC '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."); *Del. Riverkeeper Network v. FERC*, 857 F.3d 388, 399 (D.C. Cir. 2017) (upholding Commission's approval of a natural gas project conditioned on securing state certification under section 401 of the Clean Water Act); *Myersville*, 783 F.3d at 1320-21 (upholding the Commission's conditional approval of a natural gas facility where the Commission conditioned its approval on the applicant securing a required Clean Air Act permit from the state); *Pub. Utils. Comm'n of Cal. v. FERC*, 900 F.2d 269, 282 (D.C. Cir. 1990) (Commission did not violate NEPA by issuing a certificate conditioned upon the completion of the environmental analysis).

As in *Delaware Riverkeeper*, the conditional authorization here "was merely a first step for [project sponsors] to take in the complex procedure to *actually* obtaining construction approval." 857 F.3d at 398; *see supra* p. 16 (explaining that, under Authorization Order environmental condition numbers 11 and 27, Jordan Cove and Pacific Connector may not commence construction of any project facilities without first obtaining required authorizations, including state

authorizations under the Clean Water Act and Coastal Zone Management Act).

Oregon does not discuss *Myersville* or *Public Utilities Commission of California*, arguing, instead, that *Delaware Riverkeeper* was incorrectly decided or, alternatively, is distinguishable. Oregon Br. 21-23. These contentions are wrong. As the Commission explained, "[t]here is no material distinction between the Authorization Order and the Commission's prior conditional order reviewed and upheld in *Delaware Riverkeeper*." Rehearing Order P 91, JA ___. Moreover, the Commission addressed Oregon's concerns regarding possible non-construction activities that could potentially result in a discharge into navigable waters. *See id.* PP 92-95, JA ___-___; *id.* P 270, JA ___ (because Environmental Condition 11 specifies that "no construction, including no ground-disturbing activities, may occur without necessary federal authorizations or waiver thereof," there is "no risk of any project discharges into waters before resolution of state action under [Clean Water Act] section 401").

As explained in the Rehearing Order, the Commission's practice of issuing conditional authorizations is "a safeguard against inefficient

outcomes," and "fully protects the authority delegated to Oregon." *Id.* P 95, JA ___. There is no basis for revisiting *Delaware Riverkeeper* or other precedent on this issue.

B. The Commission Reasonably Conditioned Its Authorization on the Completion of Cultural Resource Reports and the Consultation Process Under the National Historic Preservation Act

The Tribes argue that the Commission violated the National Environmental Policy Act, 42 U.S.C. § 4321, *et seq*., and the National Historic Preservation Act, 54 U.S.C. § 306108, in conditionally authorizing the Project prior to completion of certain reports and documents concerning cultural resource impacts. Tribes Br. 7-15. As the Commission explained, it reasonably conditioned authorization of the Project on the completion of these reports. *See* Rehearing Order PP 150-58, JA ___-___.

As part of its environmental review process, consistent with NEPA and the National Historic Preservation Act, FERC staff conducted an extensive consultation and evaluation process regarding potential project impacts on cultural resources. *See* Final Environmental Impact Statement 4-663 – 4-686, JA ___-___. The Environmental Impact Statement noted that "numerous survey reports"

concerning archaeological, historical, and ethnographic issues have been completed for the Project since 2005. *Id.* at 4-677, JA ___. However, as the Commission explained, certain items, such as an ethnographic study, remained to be completed. *Id.* at 4-686, JA ___; Rehearing Order PP 150 & n.468, 155-58, JA ___, ___-___. The Commission conditioned its authorization on, among other things, completion of "cultural resources inventory reports for areas not previously surveyed," a revised Ethnographic Study Report addressing specific staff comments, and certain site evaluations and monitoring reports. Authorization Order Envtl. Condition No. 30, JA ___.

The Commission's approach is consistent with court precedent. In *Appalachian Voices*, this Court rejected a challenge that the Commission violated the National Historic Preservation Act by issuing a certificate order "subject to the condition that it would complete the [National Historic Preservation Act] section 106 consultation process prior to construction." 2019 WL 847199, at *3 (citing *City of Grapevine v. Dep't of Transp.*, 17 F.3d 1502, 1509 (D.C. Cir. 1994) (no violation of the National Historic Preservation Act where an agency conditionally authorized construction of a new airport runway on completion of the

section 106 consultation process)). Likewise, this Court found no violation of NEPA when the Commission issued a certificate conditioned upon completion of the agency's environmental analysis. *See Pub. Utils. Comm'n of Cal.*, 900 F.2d at 282-83; *see also Mid States Coalition for Progress v. Surface Transp. Bd.*, 345 F.3d 520, 554 (8th Cir. 2003) (NEPA is not violated "when an agency, after preparing an otherwise valid [f]inal [environmental impact statement], imposes consultation requirements in conjunction with other mitigating conditions").

In light of the extensive analysis already conducted concerning cultural resource impacts, the Commission's issuance of a conditional authorization pending completion of certain discrete items was not arbitrary or capricious.

V. THE COMMISSION APPROPRIATELY ANALYZED THE PROJECT UNDER THE NATIONAL ENVIRONMENTAL POLICY ACT

The Commission conducted an extensive environmental analysis of the proposed Project, taking a "hard look" at the Project's environmental impacts. *Balt. Gas & Elec. Co.*, 462 U.S. at 97. As discussed below, Petitioners challenge only certain aspects of the Commission's environmental analysis. Their challenges are unavailing.

A. Alternatives

NEPA requires the Commission to take a "hard look" at reasonable alternatives to a proposed natural gas project. *See e.g.*, *Sierra Club v. FERC*, 867 F.3d 1357, 1367 (D.C. Cir. 2017). 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). The Court reviews the Commission's evaluation of alternatives under a deferential standard. *See e.g.*, *Minisink*, 762 F.3d at 111; *Myersville*, 783 F.3d at 1324.

The Commission weighed the relative environmental impacts of the Project as proposed and numerous alternatives, including a no-action alternative, system alternatives, terminal site alternatives, and pipeline route alternatives and variations. *See* Rehearing Order PP 103-20, JA ___-___; Envtl. Impact Stmt. 3-1 – 3-52, JA ___-___. Apart from one pipeline route variation not at issue here, the Commission concluded that none of the alternatives represented a feasible, environmentally advantageous action. Envtl. Impact Stmt. 3-52, JA ___.

Here, Landowners challenge the Commission's analysis of the "no-action alternative" (Landowners Br. 63-66), and the Commission's rejection of an alternative design under which electricity would be supplied to the Terminal via waste heat captured from turbine exhaust (*id.* 52-56). Neither challenge has merit.

1. The No-Action Alternative

Contrary to Landowners' arguments, the Commission reasonably assessed a no-action alternative to the Project. *See* Rehearing Order P 103, JA ___; Authorization Order P 187, JA ___; Envtl. Impact Stmt. 3-4 – 3-5, JA ___-___. A no-action alternative "serves as a baseline against which the impacts of the proposed action are compared and contrasted." Envtl. Impact Stmt. 3-4, JA ___. Under the no-action alternative, "the proposed action would not occur and the environment would not be affected." Rehearing Order P 103, JA ___.

The Environmental Impact Statement noted Jordan Cove's statement that the Project is a "market-driven response to increasing natural gas supplies in the U.S. Rocky Mountain and Western Canada markets, and the growth of international demand, particularly in Asia." Envtl. Impact Stmt. 3-4, JA ___. Thus, "it is reasonable to expect that

in the absence of a change in market demand, if the . . . Project is not constructed (the No Action Alternative), exports of [liquefied natural gas] from one or more other . . . export facilities may occur." *Id.* In this scenario, "impacts could occur at other location(s) in the region as a result of another [liquefied natural gas] export project seeking to meet the demand identified by Jordan Cove." *Id.*

The Commission concluded that the no-action alternative "would not meet the [Project's] purposes and needs." Rehearing Order P 103, JA ___. In light of the Commission's finding that there was market demand for the Project (*see supra* pp. 45-48), the Commission's analysis, and rejection, of the no-action alternative was reasonable. *See, e.g.*, *Envtl. Def. Fund, Inc. v. Massey*, 986 F.2d 528, 532 (D.C. Cir. 1993) ("After weighing environmental considerations, an agency decisionmaker remains free to subordinate the environmental concerns revealed in the [Environmental Impact Statement] to other policy concerns."); *Myersville* ("Even if an agency has conceded that an alternative is environmentally superior, it nevertheless may be entitled under the circumstances not to choose that alternative.").

2. The Waste Heat Alternative

The Commission likewise reasonably rejected an alternative in which waste heat would supply all of the Terminal's electricity needs. Rehearing Order P 119, JA ___. As the Commission explained, the proposed Terminal is already designed to use waste heat to provide 24.4 megawatts of power. *Id.*; Envtl. Impact Stmt. 2-8, JA ___. The remainder of the Terminal's electricity needs (15-26 megawatts) would be supplied using a connection with the local power grid. *Id.* The Commission agreed with the Environmental Impact Statement's conclusion that "supplying all facility power through waste heat is not feasible." *Id.* This technical conclusion should be accorded deference. *See Birckhead*, 925 F.3d at 516 ("declin[ing] . . . invitation to second-guess the Commission's informed conclusion on [a] highly technical point") (citing *Del. Riverkeeper Network v. FERC*, 753 F.3d 1304, 1313 (D.C. Cir. 2014)).

B. Potential Impacts on Airport Operations

Because the Southwest Oregon Regional Airport is located less than one mile from the proposed terminal site, the Federal Aviation Administration ("FAA") conducted aeronautical studies for LNG carrier

transits, LNG storage tanks, and other onsite equipment and buildings. Authorization Order P 245, JA ___. In December 2019, the FAA issued a determination of "no hazard to air navigation" for onshore equipment and buildings, and a determination of "no hazard to air navigation for temporary structure" for docked and transiting LNG carriers. *Id.*; *see also id.* PP 246-48, JA ___ (discussing FAA findings).

Nevertheless, Landowners contend that "thermal exhaust plumes" generated by turbines and other equipment at the Terminal will adversely affect takeoffs and landings at the airport, and further contend that the Commission inadequately addressed the issue. Landowners Br. 48-52. The Commission appropriately considered this issue. *See* Rehearing Order P 196, JA ___.

The Commission considered the issue of thermal exhaust plumes in light of a 2015 FAA memorandum that explained that thermal exhaust plumes near airports "may pose a unique hazard to aircraft in critical phases of flight," but "the overall risk associated with thermal exhaust plumes in causing a disruption of flight is low." *Id.* (quoting FAA Memorandum, Technical Guidance and Assessment Tool for Evaluation of Thermal Exhaust Plume Impact on Airport Operations at

2 (Sept. 24, 2015), available at https://www.faa.gov/airports/environmental/land_use/media/Technical-Guidance-Assessment-Tool-Thermal-Exhaust-Plume-Impact.pdf); *see also* Envtl. Impact Stmt. 4-656 – 4-657, JA ___-___. The FAA memorandum recognized that thermal plumes could have an impact on airport operations, under certain circumstances. *Id.* Any such impact "would be highly dependent on a variety of factors, including the proximity of the exhaust stacks to the airport flight path, the size and speed of the aircraft, and local weather patterns (wind, ambient temperatures, atmospheric stratification at the plume site)." Rehearing Order P 196, JA ___ (citing Fed. Aviation Admin. Mem. at 2). Accordingly, the Federal Aviation Administration "recommended that airports take such plumes into account." *Id.*

As the Commission explained, "it is entirely reasonable, based on the [Federal Aviation Administration]'s 2015 memorandum, to expect the Southwest Oregon Regional Airport to take such plumes into account." *Id.* P 197, JA ___ (encouraging terminal operator to work with airport and state and local authorities to address potential impacts of thermal exhaust plumes on aircraft operations). In light of the FAA

guidance, the Commission appropriately relied on the terminal operator and airport operator to take thermal flumes into account in planning airport operations. *See City of Boston Delegation*, 897 F.3d at 255 (deferring to the Commission's decision to credit expert analysis by the Nuclear Regulatory Commission over other expert testimony and noting, "[a]gencies can be expected to respect the views of . . . other agencies as to those problems for which those other agencies are more directly responsible and more competent") (citation and internal quotation marks omitted); *see also City of Oberlin*, 937 F.3d at 610-11 (upholding Commission's consideration of pipeline safety risks where Commission referred to, and relied upon, Department of Transportation safety standards); *EarthReports*, 828 F.3d at 958 (project sponsor's future coordination with federal and local authorities, comprised a "reasonable component" of Commission's independent review of project safety considerations).

C. Wildfire Risks

Landowners also challenge the Commission's assessment of wildfire risks along the Pipeline route, asserting that the Commission failed to adequately discuss the "severity or consequences" of wildfire

risk. Landowners Br. 56-59. Contrary to this assertion, the Commission reasonably addressed these risks. The Environmental Impact Statement provides data regarding fire frequency from 2000-2015 in areas crossed by the pipeline, and discusses pipeline operations that may increase fire risk. Envtl. Impact Stmt. 4-177 – 4-179, JA ___-___. Recognizing these risks, the Commission explained that the pipeline operator would implement a *Fire Prevention and Suppression Plan*, consistent with U.S. Forest Service and Bureau of Land Management policies and practices, to "minimize the chances of a fire starting and spreading from project facilities and to reduce the risk of wildland and structural fire." Rehearing Order P 211, JA ___; *id.* P 215, JA ___ ("plan will reduce the risk of fires associated with construction and operation of the pipeline and also includes fire response procedures to be implemented in the event of a fire"). In addition, the *Erosion Control and Revegetation Plan* "requires that residual slash from timber clearing be placed at the edge of the right-of-way and scattered/redistributed across the right-of-way in a manner to minimize fire hazard risks." *Id.* P 211, JA ___. The Commission reasonably

found these measures adequately mitigated the risk of wildfires. *See City of Oberlin*, 937 F.3d at 610-11; *EarthReports*, 828 F.3d at 958.

D. Wetlands

Oregon contends that the Commission failed to take a hard look at environmental impacts to wetland ecosystems in Coos Bay. Oregon Br. 37-41, JA ___-___. Not true. The Commission extensively analyzed the proposed project's impacts on water resources and wetlands, and required a range of mitigation measures to minimize such impacts. *See* Rehearing Order PP 257-97, JA ___-___; Envtl. Impact Stmt. 4-83 – 4-122, JA ___-___. The Environmental Impact Statement explains that terminal and pipeline construction and operations would impact wetlands, groundwater, and surface water, but would not result in significant environmental impacts. Rehearing Order P 258, JA ___ (citing Envtl. Impact Stmt. at 5-4). In particular, in light of mitigation measures to reduce impacts on wetlands, construction and operation of the Project would not significantly affect wetlands. Rehearing Order P 259, JA ___ (citing Envtl. Impact Stmt. at 4-139).

The Commission explained how construction and operation of the Project would potentially impact water quality, and the numerous

mitigation measures designed to minimize such impacts, including, for example: Jordan Cove's *Wetland and Waterbody Construction and Mitigation Procedures*; *Dredged Material Management Plan*; *Erosion and Sedimentation Control Plan*; *Spill Prevention, Containment, and Countermeasures Control and Sedimentation Plan*, and various construction procedures and operational controls. Rehearing Order P 267, JA ___.

The Commission further explained that, in addition to its own independent analysis of water quality and wetland impacts, other agencies, including the U.S. Army Corps of Engineers, the Environmental Protection Agency, and Oregon state agencies, had a role in addressing water quality issues. Rehearing Order P 268, JA ___. Contrary to Oregon's arguments, the Commission did not unreasonably "defer[] to the scrutiny of others" in conditionally authorizing the Project. Oregon Br. 40. The Commission appropriately referred to the review processes of other federal and state agencies with respect to water quality issues. *See City of Boston Delegation*, 897 F.3d at 255; *City of Oberlin*, 937 F.3d at 610-11; *EarthReports*, 828 F.3d at 958. Indeed, as described above (*supra* pp. 23-27), Oregon itself has

addressed its water quality concerns through the Clean Water Act section 401 process.

E. Greenhouse Gas Emissions

The Commission found that the Project would emit approximately 2.14 million metric tons of carbon dioxide equivalent per year. Authorization Order P 259, JA ___. The Commission placed these emissions into context by (i) comparing them to cumulative emissions from other sources, and (ii) calculating their impact on Oregon's 2020 and 2050 climate goals. Rehearing Order P 243 & n.753, JA ___; Authorization Order PP 259-62, JA ___-___; Envtl. Impact Stmt. 4-850 – 4-851, JA ___-___. The Commission found that "[t]he operational emissions of these facilities could potentially increase annual [carbon dioxide equivalent] emissions based on the 2017 levels by approximately 0.0374 percent at the national level." Authorization Order P 259, JA ___. Placing the emissions into the context of Oregon's greenhouse gas emission reduction goals, the Commission explained that the Project's "annual emissions would impact the State's ability to meet its greenhouse reduction goals as the annual emissions would

represent 4.2 percent and 15.3 percent of Oregon's 2020 and 2050 [greenhouse gas reduction] goals, respectively." *Id.* P 261, JA ___.

The Commission acknowledged that the Project's greenhouse gas emissions would "contribute incrementally to future climate change impacts," but stated, "we have neither the tools nor the expertise to determine whether project-related [greenhouse gas] emissions will have a significant impact on climate change and any potential resulting effects, such as global warming or sea rise." *Id.* P 262, JA ___. The Commission explained that the agency lacked a "benchmark to determine whether a project has a significant effect on climate change." Rehearing Order P 244, JA ___ ("To assess a project's effect on climate change, the Commission can only quantify the amount of project emissions, but it has no way to then assess how that amount contributes to climate change."). The Commission went on to explain that it had assessed various models and mathematical techniques, including the Social Cost of Carbon, "but none allowed the Commission to link physical effects caused by the [Project]'s [greenhouse gas] emissions." *Id.* P 245, JA ___; *see also Appalachian Voices*, 2019 WL 847199 at *2 (Commission not required to use social cost of carbon tool

to measure project-level climate change impacts and their significance); *Sierra Club v. FERC*, 672 F. App'x 38, 39 (D.C. Cir. 2016) (same); *EarthReports*, 828 F.3d at 956 (same).

Oregon and Landowners contend that the Commission should have assessed the significance of the Project's greenhouse gas emissions. Oregon Br. 29-37; Landowners Br. 60-63. In particular, they argue that the Commission could have performed this assessment by reference to Oregon's greenhouse gas emission reduction goals. Oregon Br. 32-33, Landowners Br. 63. But as the Commission explained, "although an important consideration as part of our NEPA analysis, Oregon's emission goals are not the same as an objective determination that the [greenhouse gas] emissions from the [P]roject[] will have a significant effect on climate change." Authorization Order P 262, JA ___. The Commission's determination that Oregon's emissions reduction goals did not represent a suitable, objective benchmark for determining the significance of greenhouse gas emissions was reasonable and consistent with this Court's precedent.

Cf. Appalachian Voices, 2019 WL 847199 at *2; *Sierra Club*, 672 F. App'x at 39; *EarthReports*, 828 F.3d at 956.[4]

Oregon also argues that the Commission failed to adequately consider mitigation measures to reduce adverse impacts caused by the Project's greenhouse gas emissions. Oregon Br. 34-37. The Commission reasonably explained that it was not aware of measures established by Oregon to reduce greenhouse gas emissions emitted by natural gas or LNG facilities, and thus would not require the project operators to

[4] The Commission is currently evaluating its approach to assessing the environmental impacts of natural gas transportation facilities, including the significance of greenhouse gas emissions. *See supra* n.3 and 174 FERC ¶ 61,125, P 17. In a recent natural gas pipeline certification case, the Commission concluded that a proposed pipeline's emissions would not be significant, and issued the requested certificate, after comparing pipeline emissions to the total greenhouse gas emissions of the United States as a whole. *Northern Natural Gas Co.*, 174 FERC ¶ 61,189, PP 33-36 (2021) ("In future proceedings, the evidence on which the Commission relies to assess significance may evolve as the Commission becomes more familiar with the exercise and in response to a particular record before us . . . ."). *Northern Natural*, however, does not bear on the issues presented here. The Court does not "reach out to examine a decision made after the one actually under review," and "[a]n agency's decision is not arbitrary and capricious merely because it is not followed in a later adjudication." *Brooklyn Union Gas Co. v. FERC*, 409 F.3d 404, 406 (D.C. Cir. 2005) (citation and internal quotation marks omitted).

mitigate the impact of Project emissions on Oregon's ability to meet its emissions reduction goals. Authorization Order P 261, JA ___.

CONCLUSION

As discussed above, the petitions for review should be dismissed for lack of standing or lack of ripeness or, in the alternative, held in abeyance. If the Court proceeds to the merits, the petitions should be denied.

Respectfully submitted,

Matthew R. Christiansen
General Counsel

Robert H. Solomon
Solicitor

/s/ Susanna Y. Chu
Susanna Y. Chu
Attorney

Federal Energy Regulatory
Commission
Washington, D.C. 20426
Tel: (202) 502-8464
Fax: (202) 273-0901

April 22, 2021

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 of Fed. R. App. P. 27(d)(2)(A), Circuit Rule 27(d)(2)(A), and this Court's December 18, 2020 Order because it contains 13,593 words, excluding the parts of the document exempted by Fed. R. App. P. 32(f) and Circuit Rule 32(e)(1).

I further certify that this document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in Century Schoolbook 14-point font using Microsoft Word for Windows 365.

/s/ Susanna Y. Chu
Susanna Y. Chu
Attorney

Federal Energy Regulatory
Commission
888 First Street, N.E.
Washington, D.C. 20426
Phone: 202-502-8464
Fax: 202-273-0901
E-mail: Susanna.Chu@ferc.gov

April 22, 2021

ADDENDUM

Statutes

TABLE OF CONTENTS

PAGE

Administrative Procedure Act

5 U.S.C. § 706(2)(A) A1

Clean Water Act

33 U.S.C. § 1341(a)(1) A3

Coastal Zone Management Act

16 U.S.C. § 1456(c)(3)(A) A6

Department of Energy

42 U.S.C. § 7151(b) A9

42 U.S.C. § 7172(e) A12

National Environmental Policy Act

42 U.S.C. § 4321, et seq. A16

National Historic Preservation Act

54 U.S.C. § 306108 ..... A17

Natural Gas Act

Section 1, 15 U.S.C. §§ 717(a), (b), (c) A18

Section 3, 15 U.S.C. § 717b A19

Section 7, 15 U.S.C. § 717f A22

Section 15, 15 U.S.C. § 717n(b)(1) A24

Section 19, 15 U.S.C. § 717r(b) A26

ity shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party. The United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States: *Provided*, That any mandatory or injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance. Nothing herein (1) affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or (2) confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 392; Pub. L. 94–574, §1, Oct. 21, 1976, 90 Stat. 2721.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1009(a).	June 11, 1946, ch. 324, §10(a), 60 Stat. 243.

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

AMENDMENTS

1976—Pub. L. 94–574 removed the defense of sovereign immunity as a bar to judicial review of Federal administrative action otherwise subject to judicial review.

§ 703. Form and venue of proceeding

The form of proceeding for judicial review is the special statutory review proceeding relevant to the subject matter in a court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus, in a court of competent jurisdiction. If no special statutory review proceeding is applicable, the action for judicial review may be brought against the United States, the agency by its official title, or the appropriate officer. Except to the extent that prior, adequate, and exclusive opportunity for judicial review is provided by law, agency action is subject to judicial review in civil or criminal proceedings for judicial enforcement.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 392; Pub. L. 94–574, §1, Oct. 21, 1976, 90 Stat. 2721.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1009(b).	June 11, 1946, ch. 324, §10(b), 60 Stat. 243.

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

AMENDMENTS

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

§ 704. Actions reviewable

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

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

HISTORICAL AND REVISION NOTES

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.

ABBREVIATION OF RECORD

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

CHAPTER 8—CONGRESSIONAL REVIEW OF AGENCY RULEMAKING

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

§ 801. Congressional review

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

(i) a copy of the rule;

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

(iii) the proposed effective date of the rule.

(B) On the date of the submission of the report under subparagraph (A), the Federal agency 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 jurisdiction in each House of the Congress by the end of 15 calendar days after the submission or publication date as provided in section 802(b)(2). The report of the Comptroller General shall include an assessment of the agency's compliance with procedural steps required by paragraph (1)(B).

(B) Federal agencies shall cooperate with the Comptroller General by providing information relevant to the Comptroller General's report under subparagraph (A).

(3) A major rule relating to a report submitted under paragraph (1) shall take effect on the latest of—

(A) the later of the date occurring 60 days after the date on which—

(i) the Congress receives the report submitted under paragraph (1); or

(ii) the rule is published in the Federal Register, if so published;

(B) if the Congress passes a joint resolution of disapproval described in section 802 relating to the rule, and the President signs a veto of such resolution, the earlier date—

(i) on which either House of Congress votes and fails to override the veto of the President; or

(ii) occurring 30 session days after the date on which the Congress received the veto and objections of the President; or

(C) the date the rule would have otherwise taken effect, if not for this section (unless a joint resolution of disapproval under section 802 is enacted).

(4) Except for a major rule, a rule shall take effect as otherwise provided by law after submission to Congress under paragraph (1).

(5) Notwithstanding paragraph (3), the effective date of a rule shall not be delayed by operation of this chapter beyond the date on which either House of Congress votes to reject a joint resolution of disapproval under section 802.

(b)(1) A rule shall not take effect (or continue), if the Congress enacts a joint resolution of disapproval, described under section 802, of the rule.

(2) A rule that does not take effect (or does not continue) under paragraph (1) may not be reissued in substantially the same form, and a new rule that is substantially the same as such a rule may not be issued, unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule.

''SEC. 1003. FINDINGS AND PURPOSE.

''(a) FINDINGS.—The Congress finds and declares that—

''(1) Massachusetts Bay comprises a single major estuarine and oceanographic system extending from Cape Ann, Massachusetts south to the northern reaches of Cape Cod, encompassing Boston Harbor, Massachusetts Bay, and Cape Cod Bay;

''(2) several major riverine systems, including the Charles, Neponset, and Mystic Rivers, drain the watersheds of eastern Massachusetts into the Bay;

''(3) the shorelines of Massachusetts Bay, first occupied in the middle 1600's, are home to over 4 million people and support a thriving industrial and recreational economy;

''(4) Massachusetts Bay supports important commercial fisheries, including lobsters, finfish, and shellfisheries, and is home to or frequented by several endangered species and marine mammals;

''(5) Massachusetts Bay also constitutes an important recreational resource, providing fishing, swimming, and boating opportunities to the region;

''(6) rapidly expanding coastal populations and pollution pose increasing threats to the long-term health and integrity of Massachusetts Bay;

''(7) while the cleanup of Boston Harbor will contribute significantly to improving the overall environmental quality of Massachusetts Bay, expanded efforts encompassing the entire ecosystem will be necessary to ensure its long-term health;

''(8) the concerted efforts of all levels of Government, the private sector, and the public at large will be necessary to protect and enhance the environmental integrity of Massachusetts Bay; and

''(9) the designation of Massachusetts Bay as an Estuary of National Significance and the development of a comprehensive plan for protecting and restoring the Bay may contribute significantly to its long-term health and environmental integrity.

''(b) PURPOSE.—The purpose of this title is to protect and enhance the environmental quality of Massachusetts Bay by providing for its designation as an Estuary of National Significance and by providing for the preparation of a comprehensive restoration plan for the Bay.

''SEC. 1005. FUNDING SOURCES.

''Within one year of enactment [Nov. 14, 1988], the Administrator of the United States Environmental Protection Agency and the Governor of Massachusetts shall undertake to identify and make available sources of funding to support activities pertaining to Massachusetts Bay undertaken pursuant to or authorized by section 320 of the Clean Water Act [33 U.S.C. 1330], and shall make every effort to coordinate existing research, monitoring or control efforts with such activities.''

PURPOSES AND POLICIES OF NATIONAL ESTUARY PROGRAM

Pub. L. 100–4, title III, §317(a), Feb. 4, 1987, 101 Stat. 61, provided that:

''(1) FINDINGS.—Congress finds and declares that—

''(A) the Nation's estuaries are of great importance for fish and wildlife resources and recreation and economic opportunity;

''(B) maintaining the health and ecological integrity of these estuaries is in the national interest;

''(C) increasing coastal population, development, and other direct and indirect uses of these estuaries threaten their health and ecological integrity;

''(D) long-term planning and management will contribute to the continued productivity of these areas, and will maximize their utility to the Nation; and

''(E) better coordination among Federal and State programs affecting estuaries will increase the effectiveness and efficiency of the national effort to protect, preserve, and restore these areas.

''(2) PURPOSES.—The purposes of this section [enacting this section] are to—

''(A) identify nationally significant estuaries that are threatened by pollution, development, or overuse;

''(B) promote comprehensive planning for, and conservation and management of, nationally significant estuaries;

''(C) encourage the preparation of management plans for estuaries of national significance; and

''(D) enhance the coordination of estuarine research.''

SUBCHAPTER IV—PERMITS AND LICENSES

§ 1341. Certification

(a) Compliance with applicable requirements; application; procedures; license suspension

(1) Any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate, or, if appropriate, from the interstate water pollution control agency having jurisdiction over the navigable waters at the point where the discharge originates or will originate, that any such discharge will comply with the applicable provisions of sections 1311, 1312, 1313, 1316, and 1317 of this title. In the case of any such activity for which there is not an applicable effluent limitation or other limitation under sections 1311(b) and 1312 of this title, and there is not an applicable standard under sections 1316 and 1317 of this title, the State shall so certify, except that any such certification shall not be deemed to satisfy section 1371(c) of this title. Such State or interstate agency shall establish procedures for public notice in the case of all applications for certification by it and, to the extent it deems appropriate, procedures for public hearings in connection with specific applications. In any case where a State or interstate agency has no authority to give such a certification, such certification shall be from the Administrator. If the State, interstate agency, or Administrator, as the case may be, fails or refuses to act on a request for certification, within a reasonable period of time (which shall not exceed one year) after receipt of such request, the certification requirements of this subsection shall be waived with respect to such Federal application. No license or permit shall be granted until the certification required by this section has been obtained or has been waived as provided in the preceding sentence. No license or permit shall be granted if certification has been denied by the State, interstate agency, or the Administrator, as the case may be.

(2) Upon receipt of such application and certification the licensing or permitting agency shall immediately notify the Administrator of such application and certification. Whenever such a discharge may affect, as determined by the Administrator, the quality of the waters of any other State, the Administrator within thirty days of the date of notice of application for such Federal license or permit shall so notify such other State, the licensing or permitting agency, and the applicant. If, within sixty days after receipt of such notification, such other State determines that such discharge will affect the quality of its waters so as to violate any water quality requirements in such State, and

within such sixty-day period notifies the Administrator and the licensing or permitting agency in writing of its objection to the issuance of such license or permit and requests a public hearing on such objection, the licensing or permitting agency shall hold such a hearing. The Administrator shall at such hearing submit his evaluation and recommendations with respect to any such objection to the licensing or permitting agency. Such agency, based upon the recommendations of such State, the Administrator, and upon any additional evidence, if any, presented to the agency at the hearing, shall condition such license or permit in such manner as may be necessary to insure compliance with applicable water quality requirements. If the imposition of conditions cannot insure such compliance such agency shall not issue such license or permit.

(3) The certification obtained pursuant to paragraph (1) of this subsection with respect to the construction of any facility shall fulfill the requirements of this subsection with respect to certification in connection with any other Federal license or permit required for the operation of such facility unless, after notice to the certifying State, agency, or Administrator, as the case may be, which shall be given by the Federal agency to whom application is made for such operating license or permit, the State, or if appropriate, the interstate agency or the Administrator, notifies such agency within sixty days after receipt of such notice that there is no longer reasonable assurance that there will be compliance with the applicable provisions of sections 1311, 1312, 1313, 1316, and 1317 of this title because of changes since the construction license or permit certification was issued in (A) the construction or operation of the facility, (B) the characteristics of the waters into which such discharge is made, (C) the water quality criteria applicable to such waters or (D) applicable effluent limitations or other requirements. This paragraph shall be inapplicable in any case where the applicant for such operating license or permit has failed to provide the certifying State, or, if appropriate, the interstate agency or the Administrator, with notice of any proposed changes in the construction or operation of the facility with respect to which a construction license or permit has been granted, which changes may result in violation of section 1311, 1312, 1313, 1316, or 1317 of this title.

(4) Prior to the initial operation of any federally licensed or permitted facility or activity which may result in any discharge into the navigable waters and with respect to which a certification has been obtained pursuant to paragraph (1) of this subsection, which facility or activity is not subject to a Federal operating license or permit, the licensee or permittee shall provide an opportunity for such certifying State, or, if appropriate, the interstate agency or the Administrator to review the manner in which the facility or activity shall be operated or conducted for the purposes of assuring that applicable effluent limitations or other limitations or other applicable water quality requirements will not be violated. Upon notification by the certifying State, or if appropriate, the interstate agency or the Administrator that the operation of any such federally licensed or permitted facility or activity will violate applicable effluent limitations or other limitations or other water quality requirements such Federal agency may, after public hearing, suspend such license or permit. If such license or permit is suspended, it shall remain suspended until notification is received from the certifying State, agency, or Administrator, as the case may be, that there is reasonable assurance that such facility or activity will not violate the applicable provisions of section 1311, 1312, 1313, 1316, or 1317 of this title.

(5) Any Federal license or permit with respect to which a certification has been obtained under paragraph (1) of this subsection may be suspended or revoked by the Federal agency issuing such license or permit upon the entering of a judgment under this chapter that such facility or activity has been operated in violation of the applicable provisions of section 1311, 1312, 1313, 1316, or 1317 of this title.

(6) Except with respect to a permit issued under section 1342 of this title, in any case where actual construction of a facility has been lawfully commenced prior to April 3, 1970, no certification shall be required under this subsection for a license or permit issued after April 3, 1970, to operate such facility, except that any such license or permit issued without certification shall terminate April 3, 1973, unless prior to such termination date the person having such license or permit submits to the Federal agency which issued such license or permit a certification and otherwise meets the requirements of this section.

(b) Compliance with other provisions of law setting applicable water quality requirements

Nothing in this section shall be construed to limit the authority of any department or agency pursuant to any other provision of law to require compliance with any applicable water quality requirements. The Administrator shall, upon the request of any Federal department or agency, or State or interstate agency, or applicant, provide, for the purpose of this section, any relevant information on applicable effluent limitations, or other limitations, standards, regulations, or requirements, or water quality criteria, and shall, when requested by any such department or agency or State or interstate agency, or applicant, comment on any methods to comply with such limitations, standards, regulations, requirements, or criteria.

(c) Authority of Secretary of the Army to permit use of spoil disposal areas by Federal licensees or permittees

In order to implement the provisions of this section, the Secretary of the Army, acting through the Chief of Engineers, is authorized, if he deems it to be in the public interest, to permit the use of spoil disposal areas under his jurisdiction by Federal licensees or permittees, and to make an appropriate charge for such use. Moneys received from such licensees or permittees shall be deposited in the Treasury as miscellaneous receipts.

(d) Limitations and monitoring requirements of certification

Any certification provided under this section shall set forth any effluent limitations and

other limitations, and monitoring requirements necessary to assure that any applicant for a Federal license or permit will comply with any applicable effluent limitations and other limitations, under section 1311 or 1312 of this title, standard of performance under section 1316 of this title, or prohibition, effluent standard, or pretreatment standard under section 1317 of this title, and with any other appropriate requirement of State law set forth in such certification, and shall become a condition on any Federal license or permit subject to the provisions of this section.

(June 30, 1948, ch. 758, title IV, § 401, as added Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 877; amended Pub. L. 95–217, §§ 61(b), 64, Dec. 27, 1977, 91 Stat. 1598, 1599.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95–217 inserted reference to section 1313 of this title in pars. (1), (3), (4), and (5), struck out par. (6) which provided that no Federal agency be deemed an applicant for purposes of this subsection, and redesignated par. (7) as (6).

§ 1342. National pollutant discharge elimination system

(a) Permits for discharge of pollutants

(1) Except as provided in sections 1328 and 1344 of this title, the Administrator may, after opportunity for public hearing issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section 1311(a) of this title, upon condition that such discharge will meet either (A) all applicable requirements under sections 1311, 1312, 1316, 1317, 1318, and 1343 of this title, or (B) prior to the taking of necessary implementing actions relating to all such requirements, such conditions as the Administrator determines are necessary to carry out the provisions of this chapter.

(2) The Administrator shall prescribe conditions for such permits to assure compliance with the requirements of paragraph (1) of this subsection, including conditions on data and information collection, reporting, and such other requirements as he deems appropriate.

(3) The permit program of the Administrator under paragraph (1) of this subsection, and permits issued thereunder, shall be subject to the same terms, conditions, and requirements as apply to a State permit program and permits issued thereunder under subsection (b) of this section.

(4) All permits for discharges into the navigable waters issued pursuant to section 407 of this title shall be deemed to be permits issued under this subchapter, and permits issued under this subchapter shall be deemed to be permits issued under section 407 of this title, and shall continue in force and effect for their term unless revoked, modified, or suspended in accordance with the provisions of this chapter.

(5) No permit for a discharge into the navigable waters shall be issued under section 407 of this title after October 18, 1972. Each application for a permit under section 407 of this title, pending on October 18, 1972, shall be deemed to be an application for a permit under this section. The Administrator shall authorize a State, which he determines has the capability of administering a permit program which will carry out the objectives of this chapter to issue permits for discharges into the navigable waters within the jurisdiction of such State. The Administrator may exercise the authority granted him by the preceding sentence only during the period which begins on October 18, 1972, and ends either on the ninetieth day after the date of the first promulgation of guidelines required by section 1314(i)(2) of this title, or the date of approval by the Administrator of a permit program for such State under subsection (b) of this section, whichever date first occurs, and no such authorization to a State shall extend beyond the last day of such period. Each such permit shall be subject to such conditions as the Administrator determines are necessary to carry out the provisions of this chapter. No such permit shall issue if the Administrator objects to such issuance.

(b) State permit programs

At any time after the promulgation of the guidelines required by subsection (i)(2) of section 1314 of this title, the Governor of each State desiring to administer its own permit program for discharges into navigable waters within its jurisdiction may submit to the Administrator a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact. In addition, such State shall submit a statement from the attorney general (or the attorney for those State water pollution control agencies which have independent legal counsel), or from the chief legal officer in the case of an interstate agency, that the laws of such State, or the interstate compact, as the case may be, provide adequate authority to carry out the described program. The Administrator shall approve each submitted program unless he determines that adequate authority does not exist:

(1) To issue permits which—

(A) apply, and insure compliance with, any applicable requirements of sections 1311, 1312, 1316, 1317, and 1343 of this title;

(B) are for fixed terms not exceeding five years; and

(C) can be terminated or modified for cause including, but not limited to, the following:

(i) violation of any condition of the permit;

(ii) obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts;

(iii) change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge;

(D) control the disposal of pollutants into wells;

(2)(A) To issue permits which apply, and insure compliance with, all applicable requirements of section 1318 of this title; or

(B) To inspect, monitor, enter, and require reports to at least the same extent as required in section 1318 of this title;

(3) To insure that the public, and any other State the waters of which may be affected, receive notice of each application for a permit and to provide an opportunity for public hearing before a ruling on each such application;

of the Omnibus Budget Reconciliation Act of 1990, and not as part of the Coastal Zone Management Act of 1972 which comprises this chapter.

AMENDMENTS

1992—Subsec. (i)(3). Pub. L. 102–587 struck out comma after ''`coastal waters'' '' and inserted ''Zone'' before ''Management''.

§ 1456. Coordination and cooperation

(a) Federal agencies

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

(b) Adequate consideration of views of Federal agencies

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

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

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

(B) After any final judgment, decree, or order of any Federal court that is appealable under section 1291 or 1292 of title 28, or under any other applicable provision of Federal law, that a specific Federal agency activity is not in compliance with subparagraph (A), and certification by the Secretary that mediation under subsection (h) is not likely to result in such compliance, the President may, upon written request from the Secretary, exempt from compliance those elements of the Federal agency activity that are found by the Federal court to be inconsistent with an approved State program, if the President determines that the activity is in the paramount interest of the United States. No such exemption shall be granted on the basis of a lack of appropriations unless the President has specifically requested such appropriations as part of the budgetary process, and the Congress has failed to make available the requested appropriations.

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

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

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

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

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

(ii) concurrence by such state with such certification is conclusively presumed as provided

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

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

If a state concurs or is conclusively presumed to concur, or if the Secretary makes such a finding, the provisions of subparagraph (A) are not applicable with respect to such person, such state, and any Federal license or permit which is required to conduct any activity affecting land uses or water uses in the coastal zone of such state which is described in detail in the plan to which such concurrence or finding applies. If such state objects to such certification and if the Secretary fails to make a finding under clause (iii) with respect to such certification, or if such person fails substantially to comply with such plan as submitted, such person shall submit an amendment to such plan, or a new plan, to the Secretary of the Interior. With respect to any amendment or new plan submitted to the Secretary of the Interior pursuant to the preceding sentence, the applicable time period for purposes of concurrence by conclusive presumption under subparagraph (A) is 3 months.

(d) Application of local governments for Federal assistance; relationship of activities with approved management programs

State and local governments submitting applications for Federal assistance under other Federal programs, in or outside of the coastal zone, affecting any land or water use of natural resource of the coastal zone shall indicate the views of the appropriate state or local agency as to the relationship of such activities to the approved management program for the coastal zone. Such applications shall be submitted and coordinated in accordance with the provisions of section 6506 of title 31. Federal agencies shall not approve proposed projects that are inconsistent with the enforceable policies of a coastal state's management program, except upon a finding by the Secretary that such project is consistent with the purposes of this chapter or necessary in the interest of national security.

(e) Construction with other laws

Nothing in this chapter shall be construed—

(1) to diminish either Federal or state jurisdiction, responsibility, or rights in the field of planning, development, or control of water resources, submerged lands, or navigable waters; nor to displace, supersede, limit, or modify any interstate compact or the jurisdiction or responsibility of any legally established joint or common agency of two or more states or of two or more states and the Federal Government; nor to limit the authority of Congress to authorize and fund projects;

(2) as superseding, modifying, or repealing existing laws applicable to the various Federal agencies; nor to affect the jurisdiction, powers, or prerogatives of the International Joint Commission, United States and Canada, the Permanent Engineering Board, and the United States operating entity or entities established pursuant to the Columbia River Basin Treaty, signed at Washington, January 17, 1961, or the International Boundary and Water Commission, United States and Mexico.

(f) Construction with existing requirements of water and air pollution programs

Notwithstanding any other provision of this chapter, nothing in this chapter shall in any way affect any requirement (1) established by the Federal Water Pollution Control Act, as amended [33 U.S.C. 1251 et seq.], or the Clean Air Act, as amended [42 U.S.C. 7401 et seq.], or (2) established by the Federal Government or by any state or local government pursuant to such Acts. Such requirements shall be incorporated in any program developed pursuant to this chapter and shall be the water pollution control and air pollution control requirements applicable to such program.

(g) Concurrence with programs which affect inland areas

When any state's coastal zone management program, submitted for approval or proposed for modification pursuant to section 1455 of this title, includes requirements as to shorelands which also would be subject to any Federally supported national land use program which may be hereafter enacted, the Secretary, prior to approving such program, shall obtain the concurrence of the Secretary of the Interior, or such other Federal official as may be designated to administer the national land use program, with respect to that portion of the coastal zone management program affecting such inland areas.

(h) Mediation of disagreements

In case of serious disagreement between any Federal agency and a coastal state—

(1) in the development or the initial implementation of a management program under section 1454 of this title; or

(2) in the administration of a management program approved under section 1455 of this title;

the Secretary, with the cooperation of the Executive Office of the President, shall seek to mediate the differences involved in such disagreement. The process of such mediation shall, with respect to any disagreement described in paragraph (2), include public hearings which shall be conducted in the local area concerned.

(i) Application fee for appeals

(1) With respect to appeals under subsections (c)(3) and (d) which are submitted after November 5, 1990, the Secretary shall collect an application fee of not less than $200 for minor appeals and not less than $500 for major appeals, unless the Secretary, upon consideration of an appli-

cant's request for a fee waiver, determines that the applicant is unable to pay the fee.

(2)(A) The Secretary shall collect such other fees as are necessary to recover the full costs of administering and processing such appeals under subsection (c).

(B) If the Secretary waives the application fee under paragraph (1) for an applicant, the Secretary shall waive all other fees under this subsection for the applicant.

(3) Fees collected under this subsection shall be deposited into the Coastal Zone Management Fund established under section 1456a of this title.

(Pub. L. 89–454, title III, § 307, as added Pub. L. 92–583, Oct. 27, 1972, 86 Stat. 1285; amended Pub. L. 94–370, § 6, July 26, 1976, 90 Stat. 1018; Pub. L. 95–372, title V, § 504, Sept. 18, 1978, 92 Stat. 693; Pub. L. 101–508, title VI, § 6208, Nov. 5, 1990, 104 Stat. 1388–307; Pub. L. 102–587, title II, § 2205(b)(13), (14), Nov. 4, 1992, 106 Stat. 5051.)

REFERENCES IN TEXT

The Outer Continental Shelf Lands Act, referred to in subsec. (c)(3)(B), is act Aug. 7, 1953, ch. 345, 67 Stat. 462, as amended, which is classified generally to subchapter III (§ 1331 et seq.) of chapter 29 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of Title 43 and Tables.

The Federal Water Pollution Control Act, referred to in subsec. (f), 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.

The Clean Air Act, referred to in subsec. (f), 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.

CODIFICATION

In subsec. (d), ''section 6506 of title 31'' substituted for ''title IV of the Intergovernmental Coordination [Cooperation] Act of 1968 [42 U.S.C. 4231 et seq.]'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1992—Subsec. (c)(3)(B). Pub. L. 102–587, § 2205(b)(13), made technical amendment to directory language of Pub. L. 101–508, § 6208(b)(3)(B). See 1990 Amendment note below.

Subsec. (i). Pub. L. 102–587, § 2205(b)(14), designated existing provisions as par. (1), added pars. (2) and (3), and struck out at end of par. (1) ''The Secretary shall collect such other fees as are necessary to recover the full costs of administering and processing such appeals under subsection (c) of this section.''

1990—Subsec. (c)(1). Pub. L. 101–508, § 6208(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Each Federal agency conducting or supporting activities directly affecting the coastal zone shall conduct or support those activities in a manner which is, to the maximum extent practicable, consistent with approved state management programs.''

Subsec. (c)(2). Pub. L. 101–508, § 6208(b)(1), which directed the insertion of ''the enforceable policies of'' before ''approved State management programs'', was executed by making the insertion before ''approved state management programs'' to reflect the probable intent of Congress.

Subsec. (c)(3)(A). Pub. L. 101–508, § 6208(b)(2), in first sentence inserted '', in or outside of the coastal zone,'' after ''to conduct an activity'', substituted ''any land or water use or natural resource of'' for ''land or water uses in'', and inserted ''the enforceable policies of'' after ''the proposed activity complies with''.

Subsec. (c)(3)(B). Pub. L. 101–508, § 6208(b)(3)(A), substituted ''land or water use or natural resource of'' for ''land use or water use in'' in first sentence.

Pub. L. 101–508, § 6208(b)(3)(B), as amended by Pub. L. 102–587, § 2205(b)(13), inserted ''the enforceable policies of'' after ''such plan complies with'' in first sentence.

Subsec. (d). Pub. L. 101–508, § 6208(b)(4), substituted '', in or outside of the coastal zone, affecting any land or water use of natural resource of'' for ''affecting'' and inserted ''the enforceable policies of'' after ''that are inconsistent with''.

Subsec. (i). Pub. L. 101–508, § 6208(c), added subsec. (i).

1978—Subsec. (c)(3)(B)(ii). Pub. L. 95–372 inserted '', except if such state fails to concur with or object to such certification within three months after receipt of its copy of such certification and supporting information, such state shall provide the Secretary, the appropriate federal agency, and such person with a written statement describing the status of review and the basis for further delay in issuing a final decision, and if such statement is not so provided, concurrence by such state with such certification shall be conclusively presumed'' after ''as provided for in subparagraph (A)''.

1976—Subsec. (b). Pub. L. 94–370, § 6(2), struck out provisions requiring that in case of serious disagreement between Federal agency and state in development of program, Secretary shall seek to mediate the differences in cooperation with the Executive Office of the President and incorporated such provision into subsec. (h).

Subsec. (c)(3). Pub. L. 94–370, § 6(3), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (h). Pub. L. 94–370, § 6(4), added subsec. (h) which incorporates former provision of subsec. (b) relating to mediation by Secretary of disagreements between Federal agencies and state.

§ 1456–1. Authorization of the Coastal and Estuarine Land Conservation Program

(a) In general

The Secretary may conduct a Coastal and Estuarine Land Conservation Program, in cooperation with appropriate State, regional, and other units of government, for the purposes of protecting important coastal and estuarine areas that have significant conservation, recreation, ecological, historical, or aesthetic values, or that are threatened by conversion from their natural, undeveloped, or recreational state to other uses or could be managed or restored to effectively conserve, enhance, or restore ecological function. The program shall be administered by the National Ocean Service of the National Oceanic and Atmospheric Administration through the Office of Ocean and Coastal Resource Management.

(b) Property acquisition grants

The Secretary shall make grants under the program to coastal states with approved coastal zone management plans or National Estuarine Research Reserve units for the purpose of acquiring property or interests in property described in subsection (a) that will further the goals of—

(1) a Coastal Zone Management Plan or Program approved under this chapter;

(2) a National Estuarine Research Reserve management plan;

Office shall be headed by a Director, who shall be appointed by the Secretary and compensated at a rate equal to that of level IV of the Executive Schedule under section 5315 of title 5.

(b) Duties of Director

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

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

(2) reduce or stabilize energy costs;

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

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

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

REFERENCES IN TEXT

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

SUBCHAPTER III—TRANSFERS OF FUNCTIONS

§ 7151. General transfers

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

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

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

REFERENCES IN TEXT

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

EMERGENCY PREPAREDNESS FUNCTIONS

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

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

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

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

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

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

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

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

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

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

(b) Executive Order No. 11969 of February 2, 1977 [formerly set out as a note under 15 U.S.C. 717], relating to the administration of the Emergency Natural Gas Act

of 1977 [formerly set out as a note under 15 U.S.C. 717], is hereby amended by deleting the second sentence in Section 1, by deleting ''the Secretary of the Interior, the Administrator of the Federal Energy Administration, other members of the Federal Power Commission and in Section 2, and by deleting ''Chairman of the Federal Power Commission'' and ''Chairman'' wherever those terms appear and substituting therefor ''Secretary of Energy'' and ''Secretary'', respectively.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Executive Order No. 10480, as amended [formerly set out as a note under 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.)

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.

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

[2] See References in Text note below.

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

(d) Functions of Bureau of Mines

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

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

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

(3) coal preparation and analysis.

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

REFERENCES IN TEXT

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

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

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

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

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

AMENDMENTS

1995—Subsec. (a)(1)(C) to (F). Pub. L. 104–58, § 104(h)(1), redesignated subpars. (D) to (F) as (C) to (E), respectively, and struck out former subpar. (C) which read as follows: ''the Alaska Power Administration;''.

Subsec. (a)(2). Pub. L. 104–58, § 104(h)(2), inserted ''and'' after ''Southwestern Power Administration,''

his term would otherwise expire under this subsection.'', and added par. (2).

EFFECTIVE DATE OF 1990 AMENDMENT

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

RENEWABLE ENERGY AND ENERGY CONSERVATION INCENTIVES

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

''(a) DEFINITION.—For purposes of this section, 'renewable energy' means energy from photovoltaic, solar thermal, wind, geothermal, and biomass energy production technologies.

''(b) RATE INCENTIVES STUDY.—Within 18 months after enactment [Nov. 15, 1990], the Federal Energy Regulatory Commission, in consultation with the Environmental Protection Agency, shall complete a study which calculates the net environmental benefits of renewable energy, compared to nonrenewable energy, and assigns numerical values to them. The study shall include, but not be limited to, environmental impacts on air, water, land use, water use, human health, and waste disposal.

''(c) MODEL REGULATIONS.—In conjunction with the study in subsection (b), the Commission shall propose one or more models for incorporating the net environmental benefits into the regulatory treatment of renewable energy in order to provide economic compensation for those benefits.

''(d) REPORT.—The Commission shall transmit the study and the model regulations to Congress, along with any recommendations on the best ways to reward renewable energy technologies for their environmental benefits, in a report no later than 24 months after enactment [Nov. 15, 1990].''

RETENTION AND USE OF REVENUES FROM LICENSING FEES, INSPECTION SERVICES, AND OTHER SERVICES AND COLLECTIONS; REDUCTION TO ACHIEVE FINAL FISCAL YEAR APPROPRIATION

Pub. L. 99–500, §101(e) [title III], Oct. 18, 1986, 100 Stat. 1783–194, 1783–208, and Pub. L. 99–591, §101(e) [title III], Oct. 30, 1986, 100 Stat. 3341–194, 3341–208, provided in part: ''That hereafter and notwithstanding any other provision of law revenues from licensing fees, inspection services, and other services and collections, estimated at $78,754,000 in fiscal year 1987, may be retained and used for necessary expenses in this account [Federal Energy Regulatory Commission, Salaries and Expenses], and may remain available until expended: *Provided further*, That the sum herein appropriated shall be reduced as revenues are received during fiscal year 1987, so as to result in a final fiscal year 1987 appropriation estimated at not more than $20,325,000.''

Similar provisions were contained in the following appropriation acts:

Pub. L. 116–94, div. C, title III, Dec. 20, 2019, 133 Stat. 2678.

Pub. L. 115–244, div. A, title III, Sept. 21, 2018, 132 Stat. 2915.

Pub. L. 115–141, div. D, title III, Mar. 23, 2018, 132 Stat. 527.

Pub. L. 115–31, div. D, title III, May 5, 2017, 131 Stat. 319.

Pub. L. 114–113, div. D, title III, Dec. 18, 2015, 129 Stat. 2415.

Pub. L. 113–235, div. D, title III, Dec. 16, 2014, 128 Stat. 2322.

Pub. L. 113–76, div. D, title III, Jan. 17, 2014, 128 Stat. 172.

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 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.)

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.

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

[1] See References in Text note below.

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.)

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.

§ 7174. Referral of other rulemaking proceedings to Commission

(a) Notification of Commission of proposed action; public comment

Except as provided in section 7173 of this title, whenever the Secretary proposes to prescribe rules, regulations, and statements of policy of general applicability in the exercise of any function which is transferred to the Secretary under section 7151 of this title or section 60501 of title 49, he shall notify the Commission of the proposed action. If the Commission, in its discretion, determines within such period as the Secretary may prescribe, that the proposed action may significantly affect any function within the jurisdiction of the Commission pursuant to section 7172(a)(1) and (c)(1) of this title and section 60502 of title 49, the Secretary shall immediately refer the matter to the Commission, which shall provide an opportunity for public comment.

(b) Recommendations of Commission; publication

Following such opportunity for public comment the Commission, after consultation with the Secretary, shall either—

(1) concur in adoption of the rule or statement as proposed by the Secretary;

(2) concur in adoption of the rule or statement only with such changes as it may recommend; or

(3) recommend that the rule or statement not be adopted.

The Commission shall promptly publish its recommendations, adopted under this subsection, along with an explanation of the reason for its actions and an analysis of the major comments, criticisms, and alternatives offered during the comment period.

(c) Options of Secretary; final agency action

Following publication of the Commission's recommendations the Secretary shall have the option of—

(1) issuing a final rule or statement in the form initially proposed by the Secretary if the Commission has concurred in such rule pursuant to subsection (b)(1);

(2) issuing a final rule or statement in amended form so that the rule conforms in all respects with the changes proposed by the Commission if the Commission has concurred in such rule or statement pursuant to subsection (b)(2); or

(3) ordering that the rule shall not be issued.

The action taken by the Secretary pursuant to this subsection shall constitute a final agency action for purposes of section 704 of title 5.

(Pub. L. 95–91, title IV, § 404, Aug. 4, 1977, 91 Stat. 586.)

CODIFICATION

In subsec. (a), ''section 60501 of title 49'' substituted for reference to section 306 of this Act, meaning section 306 of Pub. L. 95–91 [42 U.S.C. 7155], and ''section 60502 of title 49'' substituted for reference to section 402(b), meaning section 402(b) of Pub. L. 95–91 [42 U.S.C. 7172(b)] on authority of Pub. L. 103–272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

§ 7175. Right of Secretary to intervene in Commission proceedings

The Secretary may as a matter of right intervene or otherwise participate in any proceeding before the Commission. The Secretary shall comply with rules of procedure of general appli-

Sec.
4370j. Municipal Ombudsman.

SUBCHAPTER IV—FEDERAL PERMITTING IMPROVEMENT

4370m. Definitions.
4370m–1. Federal Permitting Improvement Council.
4370m–2. Permitting process improvement.
4370m–3. Interstate compacts.
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. Sunset.

§ 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.)

SHORT TITLE

Section 1 Pub. L. 91–190 provided: ''That this Act [enacting this chapter] may be cited as the 'National Environmental Policy Act of 1969'.''

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.

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, 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 in-

or any Federal license, permit, or other approval is required) in accordance with the purposes of this division and give consideration to programs and projects that will further the purposes of this division.

(Pub. L. 113–287, § 3, Dec. 19, 2014, 128 Stat. 3226.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
306105	16 U.S.C. 470h–2(d).	Pub. L. 89–665, title I, § 110(d), as added Pub. L. 96–515, title II, § 206, Dec. 12, 1980, 94 Stat. 2996.

§ 306106. Review of plans of transferees of surplus federally owned historic property

The Secretary shall review and approve the plans of transferees of surplus federally owned historic property not later than 90 days after receipt of the plans to ensure that the prehistorical, historical, architectural, or culturally significant values will be preserved or enhanced.

(Pub. L. 113–287, § 3, Dec. 19, 2014, 128 Stat. 3226.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
306106	16 U.S.C. 470h–2(e).	Pub. L. 89–665, title I, § 110(e), as added Pub. L. 96–515, title II, § 206, Dec. 12, 1980, 94 Stat. 2996.

§ 306107. Planning and actions to minimize harm to National Historic Landmarks

Prior to the approval of any Federal undertaking that may directly and adversely affect any National Historic Landmark, the head of the responsible Federal agency shall to the maximum extent possible undertake such planning and actions as may be necessary to minimize harm to the landmark. The head of the Federal agency shall afford the Council a reasonable opportunity to comment with regard to the undertaking.

(Pub. L. 113–287, § 3, Dec. 19, 2014, 128 Stat. 3226.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
306107	16 U.S.C. 470h–2(f).	Pub. L. 89–665, title I, § 110(f), as added Pub. L. 96–515, title II, § 206, Dec. 12, 1980, 94 Stat. 2996.

§ 306108. Effect of undertaking on historic property

The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, shall take into account the effect of the undertaking on any historic property. The head of the Federal agency shall afford the Council a reasonable opportunity to comment with regard to the undertaking.

(Pub. L. 113–287, § 3, Dec. 19, 2014, 128 Stat. 3227.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
306108	16 U.S.C. 470f.	Pub. L. 89–665, title I, § 106, Oct. 15, 1966, 80 Stat. 917; Pub. L. 94–422, title II, § 201(3), Sept. 28, 1976, 90 Stat. 1320.

The words ''historic property'' are substituted for ''district, site, building, structure, or object that is included in or eligible for inclusion in the National Register'' because of the definition of ''historic property'' in section 300308 of the new title.

§ 306109. Costs of preservation as eligible project costs

A Federal agency may include the costs of preservation activities of the agency under this division as eligible project costs in all undertakings of the agency or assisted by the agency. The eligible project costs may include amounts paid by a Federal agency to a State to be used in carrying out the preservation responsibilities of the Federal agency under this division, and reasonable costs may be charged to Federal licensees and permittees as a condition to the issuance of the license or permit.

(Pub. L. 113–287, § 3, Dec. 19, 2014, 128 Stat. 3227.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
306109	16 U.S.C. 470h–2(g).	Pub. L. 89–665, title I, § 110(g), as added Pub. L. 96–515, title II, § 206, Dec. 12, 1980, 94 Stat. 2996.

§ 306110. Annual preservation awards program

The Secretary shall establish an annual preservation awards program under which the Secretary may make monetary awards in amounts of not to exceed $1,000 and provide citations for special achievement to officers and employees of Federal, State, and certified local governments in recognition of their outstanding contributions to the preservation of historic property. The program may include the issuance of annual awards by the President to any citizen of the United States recommended for the award by the Secretary.

(Pub. L. 113–287, § 3, Dec. 19, 2014, 128 Stat. 3227.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
306110	16 U.S.C. 470h–2(h).	Pub. L. 89–665, title I, § 110(h), as added Pub. L. 96–515, title II, § 206, Dec. 12, 1980, 94 Stat. 2997.

The words ''historic property'' are substituted for ''historic resources'' for consistency because the defined term in the new division is ''historic property''.

§ 306111. Environmental impact statement

Nothing in this division shall be construed to—

(1) require the preparation of an environmental impact statement where the statement would not otherwise be required under the Na-

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.
717c. Rates and charges.
717c–1. Prohibition on market manipulation.
717d. Fixing rates and charges; determination of cost of production or transportation.
717e. Ascertainment of cost of property.
717f. Construction, extension, or abandonment of facilities.
717g. Accounts; records; memoranda.
717h. Rates of depreciation.
717i. Periodic and special reports.
717j. State compacts for conservation, transportation, etc., of natural gas.
717k. Officials dealing in securities.
717*l*. Complaints.
717m. Investigations by Commission.
717n. Process coordination; hearings; rules of procedure.
717*o*. Administrative powers of Commission; rules, regulations, and orders.
717p. Joint boards.
717q. Appointment of officers and employees.
717r. Rehearing and review.
717s. Enforcement of chapter.
717t. General penalties.
717t–1. Civil penalty authority.
717t–2. Natural gas market transparency rules.
717u. Jurisdiction of offenses; enforcement of liabilities and duties.
717v. Separability.
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.)

AMENDMENTS

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

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

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

TERMINATION OF FEDERAL POWER COMMISSION; TRANSFER OF FUNCTIONS

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

STATE LAWS AND REGULATIONS

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

''(1) in closed containers; or

''(2) otherwise to any person for use by such person as a fuel in a self-propelled vehicle,

shall not be considered to be a transportation or sale of natural gas within the meaning of any State law, regu-

lation, or order in effect before January 1, 1989. This subsection shall not apply to any provision of any State law, regulation, or order to the extent that such provision has as its primary purpose the protection of public safety.''

EMERGENCY NATURAL GAS ACT OF 1977

Pub. L. 95–2, Feb. 2, 1977, 91 Stat. 4, authorized President to declare a natural gas emergency and to require emergency deliveries and transportation of natural gas until the earlier of Apr. 30, 1977, or termination of emergency by President and provided for antitrust protection, emergency purchases, adjustment in charges for local distribution companies, relationship to Natural Gas Act, effect of certain contractual obligations, administrative procedure and judicial review, enforcement, reporting to Congress, delegation of authorities, and preemption of inconsistent State or local action.

EXECUTIVE ORDER NO. 11969

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

PROCLAMATION NO. 4485

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

PROCLAMATION NO. 4495

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

§ 717a. Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AMENDMENTS

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

TERMINATION OF FEDERAL POWER COMMISSION; TRANSFER OF FUNCTIONS

Federal Power Commission terminated and functions, personnel, property, funds, etc., transferred to Secretary of Energy (except for certain functions transferred to Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a)(1), 7291, and 7293 of Title 42, The Public Health and Welfare.

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

(a) Mandatory authorization order

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

(b) Free trade agreements

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

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

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

(c) Expedited application and approval process

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

(d) Construction with other laws

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

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

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

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

(e) LNG terminals

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

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

(A) set the matter for hearing;

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

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

(D) issue or deny the appropriate order accordingly.

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

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

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

(ii) condition an order on—

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

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

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

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

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

(f) Military installations

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

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

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

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

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

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

REFERENCES IN TEXT

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

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

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

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

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

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).

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 authorization to construct an LNG terminal and encourage applicants to cooperate with State and local officials.

(b) State consultation

The Governor of a State in which an LNG terminal is proposed to be located shall designate the appropriate State agency for the purposes of consulting with the Commission regarding an application under section 717b of this title. The Commission shall consult with such State agency regarding State and local safety considerations prior to issuing an order pursuant to section 717b of this title. For the purposes of this section, State and local safety considerations include—

(1) the kind and use of the facility;

(2) the existing and projected population and demographic characteristics of the location;

(3) the existing and proposed land use near the location;

(4) the natural and physical aspects of the location;

(5) the emergency response capabilities near the facility location; and

(6) the need to encourage remote siting.

(c) Advisory report

The State agency may furnish an advisory report on State and local safety considerations to the Commission with respect to an application no later than 30 days after the application was filed with the Commission. Before issuing an order authorizing an applicant to site, construct, expand, or operate an LNG terminal, the Commission shall review and respond specifically to the issues raised by the State agency described in subsection (b) in the advisory report. This subsection shall apply to any application filed after August 8, 2005. A State agency has 30 days after August 8, 2005 to file an advisory report related to any applications pending at the Commission as of August 8, 2005.

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 appli-

cation shall be denied. The Commission shall have the power to attach to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require.

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

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

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

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

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

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

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

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

AMENDMENTS

1988—Subsec. (f). Pub. L. 100–474 designated existing provisions as par. (1) and added par. (2).

1978—Subsec. (c). Pub. L. 95–617, §608(a), (b)(1), designated existing first paragraph as par. (1)(A) and existing second paragraph as par. (2).

Subsec. (e). Pub. L. 95–617, §608(b)(2), substituted ''subsection (c)(1)'' for ''subsection (c)''.

1947—Subsec. (h). Act July 25, 1947, added subsec. (h).

1942—Subsecs. (c) to (g). Act Feb. 7, 1942, struck out subsec. (c), and added new subsecs. (c) to (g).

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–474, §3, Oct. 6, 1988, 102 Stat. 2302, provided that: ''The provisions of this Act [amending this section and enacting provisions set out as a note under section 717w of this title] shall become effective one hundred and twenty days after the date of enactment [Oct. 6, 1988].''

TRANSFER OF FUNCTIONS

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

§ 717g. Accounts; records; memoranda

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

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

(b) Access to and inspection of accounts and records

The Commission shall at all times have access to and the right to inspect and examine all ac-

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

(e) Testimony of witnesses

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

(f) Deposition of witnesses in a foreign country

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

(g) Witness fees

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

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

AMENDMENTS

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

EFFECTIVE DATE OF 1970 AMENDMENT

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

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

Pub. L. 107–355, §26, Dec. 17, 2002, 116 Stat. 3012, required the Federal Energy Regulatory Commission, in consultation with the Department of Energy, to conduct a study on the natural gas pipeline transmission network in New England and natural gas storage facilities associated with that network, and submit a report on the results to Congress by not later than 1 year after Dec. 17, 2002.

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

(a) Definition

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

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

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

(b) Designation as lead agency

(1) In general

The Commission shall act as the lead agency for the purposes of coordinating all applicable Federal authorizations and for the purposes of complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(2) Other agencies

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

(c) Schedule

(1) Commission authority to set schedule

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

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

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

(2) Failure to meet schedule

If a Federal or State administrative agency does not complete a proceeding for an approval that is required for a Federal authorization in accordance with the schedule established by the Commission, the applicant may pursue remedies under section 717r(d) of this title.

(d) Consolidated record

The Commission shall, with the cooperation of Federal and State administrative agencies and officials, maintain a complete consolidated record of all decisions made or actions taken by the Commission or by a Federal administrative agency or officer (or State administrative agency or officer acting under delegated Federal authority) with respect to any Federal authorization. Such record shall be the record for—

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

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

(e) Hearings; parties

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

(f) Procedure

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

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

REFERENCES IN TEXT

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

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

AMENDMENTS

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

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

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

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

§ 717p. Joint boards

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

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

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

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

chapter to avail itself of such cooperation, services, records, and facilities as may be afforded by any State commission.

(c) Information and reports available to State commissions

The Commission shall make available to the several State commissions such information and reports as may be of assistance in State regulation of natural-gas companies. Whenever the Commission can do so without prejudice to the efficient and proper conduct of its affairs, it may, upon request from a State commission, make available to such State commission as witnesses any of its trained rate, valuation, or other experts, subject to reimbursement of the compensation and traveling expenses of such witnesses. All sums collected hereunder shall be credited to the appropriation from which the amounts were expended in carrying out the provisions of this subsection.

(June 21, 1938, ch. 556, § 17, 52 Stat. 830.)

§ 717q. Appointment of officers and employees

The Commission is authorized to appoint and fix the compensation of such officers, attorneys, examiners, and experts as may be necessary for carrying out its functions under this chapter; and the Commission may, subject to civil-service laws, appoint such other officers and employees as are necessary for carrying out such functions and fix their salaries in accordance with chapter 51 and subchapter III of chapter 53 of title 5.

(June 21, 1938, ch. 556, § 18, 52 Stat. 831; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972.)

CODIFICATION

Provisions that authorized the Commission to appoint and fix the compensation of such officers, attorneys, examiners, and experts as may be necessary for carrying out its functions under this chapter ''without regard to the provisions of other laws applicable to the employment and compensation of officers and employees of the United States'' are omitted as obsolete and superseded.

As to the compensation of such personnel, sections 1202 and 1204 of the Classification Act of 1949, 63 Stat. 972, 973, repealed the Classification Act of 1923 and all other laws or parts of laws inconsistent with the 1949 Act. The Classification Act of 1949 was repealed by Pub. L. 89–554, Sept. 6, 1966, § 8(a), 80 Stat. 632, and reenacted as chapter 51 and subchapter III of chapter 53 of Title 5, Government Organization and Employees. Section 5102 of Title 5 contains the applicability provisions of the 1949 Act, and section 5103 of Title 5 authorizes the Office of Personnel Management to determine the applicability to specific positions and employees.

Such appointments are now subject to the civil service laws unless specifically excepted by those laws or by laws enacted subsequent to Executive Order 8743, Apr. 23, 1941, issued by the President pursuant to the Act of Nov. 26, 1940, ch. 919, title I, § 1, 54 Stat. 1211, which covered most excepted positions into the classified (competitive) civil service. The Order is set out as a note under section 3301 of Title 5.

''Chapter 51 and subchapter III of chapter 53 of title 5'' substituted in text for ''the Classification Act of 1949, as amended'' on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5.

AMENDMENTS

1949—Act Oct. 28, 1949, substituted ''Classification Act of 1949'' for ''Classification Act of 1923''.

REPEALS

Act Oct. 28, 1949, ch. 782, cited as a credit to this section, was repealed (subject to a savings clause) by Pub. L. 89–554, Sept. 6, 1966, § 8, 80 Stat. 632, 655.

§ 717r. Rehearing and review

(a) Application for rehearing; time

Any person, State, municipality, or State commission aggrieved by an order issued by the Commission in a proceeding under this chapter to which such person, State, municipality, or State commission is a party may apply for a rehearing within thirty days after the issuance of such order. The application for rehearing shall set forth specifically the ground or grounds upon which such application is based. Upon such application the Commission shall have power to grant or deny rehearing or to abrogate or modify its order without further hearing. Unless the Commission acts upon the application for rehearing within thirty days after it is filed, such application may be deemed to have been denied. No proceeding to review any order of the Commission shall be brought by any person unless such person shall have made application to the Commission for a rehearing thereon. Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this chapter.

(b) Review of Commission order

Any party to a proceeding under this chapter aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the court of appeals of the United States for any circuit wherein the natural-gas company to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall forthwith be transmitted by the clerk of the court to any member of the Commission and thereupon the Commission shall file with the court the record upon which the order complained of was entered, as provided in section 2112 of title 28. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commis-

sion, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which is supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(c) Stay of Commission order

The filing of an application for rehearing under subsection (a) shall not, unless specifically ordered by the Commission, operate as a stay of the Commission's order. The commencement of proceedings under subsection (b) of this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

(d) Judicial review

(1) In general

The United States Court of Appeals for the circuit in which a facility subject to section 717b of this title or section 717f of this title is proposed to be constructed, expanded, or operated shall have original and exclusive jurisdiction over any civil action for the review of an order or action of a Federal agency (other than the Commission) or State administrative agency acting pursuant to Federal law to issue, condition, or deny any permit, license, concurrence, or approval (hereinafter collectively referred to as ''permit'') required under Federal law, other than the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.).

(2) Agency delay

The United States Court of Appeals for the District of Columbia shall have original and exclusive jurisdiction over any civil action for the review of an alleged failure to act by a Federal agency (other than the Commission) or State administrative agency acting pursuant to Federal law to issue, condition, or deny any permit required under Federal law, other than the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.), for a facility subject to section 717b of this title or section 717f of this title. The failure of an agency to take action on a permit required under Federal law, other than the Coastal Zone Management Act of 1972, in accordance with the Commission schedule established pursuant to section 717n(c) of this title shall be considered inconsistent with Federal law for the purposes of paragraph (3).

(3) Court action

If the Court finds that such order or action is inconsistent with the Federal law governing such permit and would prevent the construction, expansion, or operation of the facility subject to section 717b of this title or section 717f of this title, the Court shall remand the proceeding to the agency to take appropriate action consistent with the order of the Court. If the Court remands the order or action to the Federal or State agency, the Court shall set a reasonable schedule and deadline for the agency to act on remand.

(4) Commission action

For any action described in this subsection, the Commission shall file with the Court the consolidated record of such order or action to which the appeal hereunder relates.

(5) Expedited review

The Court shall set any action brought under this subsection for expedited consideration.

(June 21, 1938, ch. 556, § 19, 52 Stat. 831; June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Pub. L. 85–791, § 19, Aug. 28, 1958, 72 Stat. 947; Pub. L. 109–58, title III, § 313(b), Aug. 8, 2005, 119 Stat. 689.)

REFERENCES IN TEXT

The Coastal Zone Management Act of 1972, referred to in subsec. (d)(1), (2), is title III of Pub. L. 89–454, as added by Pub. L. 92–583, Oct. 27, 1972, 86 Stat. 1280, as amended, which is classified generally to chapter 33 (§ 1451 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1451 of Title 16 and Tables.

CODIFICATION

In subsec. (b), ''section 1254 of title 28'' substituted for ''sections 239 and 240 of the Judicial Code, as amended [28 U.S.C. 346, 347]'' on authority of act June 25, 1948, ch. 646, 62 Stat. 869, the first section of which enacted Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

2005—Subsec. (d). Pub. L. 109–58 added subsec. (d).

1958—Subsec. (a). Pub. L. 85–791, § 19(a), inserted sentence providing that until record in a proceeding has been filed in a court of appeals, Commission may modify or set aside any finding or order issued by it.

Subsec. (b). Pub. L. 85–791, § 19(b), in second sentence, substituted ''transmitted by the clerk of the court to'' for ''served upon'', substituted ''file with the court'' for ''certify and file with the court a transcript of'', and inserted ''as provided in section 2112 of title 28'', and, in third sentence, substituted ''petition'' for ''transcript'', and ''jurisdiction, which upon the filing of the record with it shall be exclusive'' for ''exclusive jurisdiction''.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted ''court of appeals'' for ''circuit court of appeals'' wherever appearing.

§ 717s. Enforcement of chapter

(a) Action in district court for injunction

Whenever it shall appear to the Commission that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this chapter, or of any rule, regulation, or order thereunder, it may in its discretion bring an action in the proper district court of the United States, or the United States courts of any Territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices and to enforce compliance with this chapter or any rule, regulation, or order thereunder,

CERTIFICATE OF SERVICE

I hereby certify that, on April 22, 2021, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Susanna Y. Chu
Susanna Y. Chu
Attorney