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Council on Environmental Quality
Attn: Horst Greczmiel
Associate Director for National Environmental Policy Act Oversight
722 Jackson Place NW
Washington, DC 20503

Re: Comments of INGAA on Draft Guidance on Improving the Process for Preparing Efficient and Timely Environmental Reviews under NEPA

Dear Mr. Greczmiel:

Per the notice issued by the Council on Environmental Quality (CEQ) on December 7, 2011, and published in the December 13, 2011, Federal Register,¹ the Interstate Natural Gas Association of America (INGAA) submits the following comments on the Draft Guidance on Improving the Process for Preparing Efficient and Timely Environmental Reviews under the National Environmental Policy Act (Draft Guidance) for your consideration and response.

Introduction

INGAA is comprised of 26 members, representing the vast majority of the interstate natural gas transmission pipeline companies in the U.S. and comparable companies in Canada. INGAA's members, who operate approximately 200,000 miles of pipelines, serve as an indispensable link between natural gas producers and consumers.

The President's Council on Jobs and Competitiveness' (President's Jobs Council) recent 2011 Year-End Report² recognized that optimizing the use of America's natural resources through energy and transportation efficiency is a national priority. Promoting energy innovation and investment "can fuel the prosperity Americans seek for the coming generation and beyond," but "[t]he permitting process must be streamlined."³

The natural gas industry is forecasted to add over 43 Bcf/d of new natural gas transmission capacity over the next 25 years to meet demand⁴ with approximately 1,400 miles

¹ *Notice of Availability of Draft Guidance on Improving the Process for Preparing Efficient and Timely Environmental Reviews under the National Environmental Policy Act*, 76 Fed. Reg. 77,492 (Dec. 13, 2011).

² *Road Map to Renewal: Invest in Our Future, Build on Our Strengths, Play To Win*, President's Council on Jobs and Competitiveness, 2011 Year-End Report ("President's Jobs Council Year-End Report").

³ *Id.* at p. 28.

⁴ *See North American Natural Gas Midstream Infrastructure Through 2035: A Secure Energy Future*, Executive Summary, prepared for The INGAA Foundation, Inc., by ICF International, June 28, 2011.

per year of new natural gas mainline, 600 miles per year of new laterals, 24 Bcf per year of new working gas in storage, and 197,000 horsepower per year for pipeline compression.⁵ Moreover, the industry has a well-established record of raising capital for infrastructure development. It has been projected that the cost of new natural gas transmission needed over the next 25 years will be approximately \$5.7 billion per year, and gathering and processing will add an additional \$2.6 billion per year on average.⁶

The siting, construction, and operation of natural gas transmission pipelines require federal permits, grants of rights-of-way, and approvals from various agencies, including the Federal Energy Regulatory Commission (FERC). The aforementioned federal approvals require compliance with the National Environmental Policy Act (NEPA). INGAA members are committed to minimizing adverse impacts to the environment that may occur during development of this critical infrastructure and agree that the permitting for these projects should be completed in an environmentally responsible and timely manner while meeting the energy needs of the nation.

A Timely and Predictable NEPA Review Process Is Vital

The President's Jobs Council recognized that optimizing the nation's natural resources, creating jobs, and achieving energy resilience and diversity would require cooperation among industry participants, regulators and environmental advocates, specifically with respect to "construct[ing] pathways (pipelines, transmission and distribution) to deliver electricity and fuel"⁷ through an efficient permitting process:

The [Jobs] Council recognizes the important safety and environmental concerns surrounding these types of projects, but now more than ever, the jobs and economic and energy security benefits of these energy projects require us to tackle the issues head-on and to expeditiously, though cautiously, move forward on projects that can support hundreds of thousands of jobs. Industry participants also must work with regulators and environmental advocates to implement best practices In addition, regulatory and permitting obstacles that could threaten the development of some energy projects negatively impact jobs and weaken our energy infrastructure need to be addressed. Speedy adoption of best practice standards would allow government officials to reduce regulatory and permitting obstacles to important energy projects.⁸

As implemented today, the NEPA review process can become mired in unnecessary delay that can hinder timely infrastructure development. This issue has been recognized by

⁵ *Id.*

⁶ *Id.*

⁷ President's Jobs Council Year-End Report at p. 29.

⁸ *Id.*

many including the last two administrations which, through Executive Orders, have attempted to bring greater efficiency to the permitting process for energy projects. The current administration in October 2011 identified 14 infrastructure projects to receive expedited review. The Administration also announced it will accelerate the permitting and construction of seven proposed electric transmission lines. Similarly, a number of federal agencies have entered into memorandums of understanding (MOU) to coordinate cooperative agency procedures. For example, FERC and the U.S. Army Corps of Engineers entered into an MOU to “streamline regulatory processes through early coordination to identify project purposes, needs and alternatives that each agency can use in carrying out its respective regulatory responsibilities.”⁹ In addition, the Department of Energy (DOE) and the Bureau of Land Management (BLM) reached an MOU to speed the NEPA review for DOE loan guarantee projects in California. Further, for off-shore facilities, a 2010 U.S. Department of Interior initiative, “Smart from the Start,” includes evaluating the environmental impacts of off-shore leases at the same time the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) is identifying sites best suited for such leases.¹⁰ The projects themselves still require a full NEPA analysis, but the initiative at least attempts to run an environmental analysis concurrent with other steps in the process at an earlier point.

The CEQ’s Draft Guidance on NEPA, however, does not go far enough in effectuating efficient regulatory reviews such as those discussed above. CEQ should evaluate the processes utilized during these and similar efforts to determine what processes, economies of scale, etc. allow for these more efficient reviews. CEQ should adopt those lessons-learned as best practices for *all* infrastructure development projects to help resolve common challenges faced by the pipeline industry with respect to timely completion of the NEPA process and to help provide natural gas infrastructure needed to help fuel our nation’s economy.

As discussed more fully below, INGAA appreciates CEQ’s attempt to improve the NEPA review process and encourages CEQ to do whatever it can to examine its Draft Guidance and rules in context in order to promote a timely and predictable NEPA review process.

1. The role of the lead agency is to lead and shepherd a project through the environmental review process in a manner that avoids delay and duplication, sets clear timelines, and promotes concurrent, not sequential, actions by cooperating and coordinating agencies.

⁹ See FERC, “U.S. Army Corps of Engineers sign MOU on agency roles in authorizing gas projects,” News Release: July 13, 2005.

¹⁰ See U.S. Department of Interior, “Salazar Launches ‘Smart from the Start’ Initiative to Speed Offshore Wind Energy Development off the Atlantic Coast,” Press Release: November 23, 2010.

2. The efficient development of necessary infrastructure projects requires established and predictable timelines for conducting NEPA reviews.
3. Non-governmental project proponents can and should be allowed to help facilitate the NEPA process by providing project and environmental information, meeting with agencies, organizing outreach efforts, and responding to questions relating to the project.

Before discussing the merits of these points, it is useful to summarize the NEPA process as it applies to the interstate pipeline industry.

Summary of the FERC NEPA Process

In order to construct, acquire, alter, abandon, or operate an interstate natural gas transportation facility, a company must obtain a certificate of public convenience and necessity from the Federal Energy Regulatory Commission (FERC), pursuant to section 7(c) of the Natural Gas Act (NGA).¹¹ The Energy Policy Act of 2005 (EPAct 2005) designated FERC as the lead agency, for purposes of NEPA compliance, for such facilities.¹² In addition to the CEQ regulations, FERC has issued its own regulations that govern its NEPA process.¹³

Specifically, FERC has promulgated regulations identifying those activities for which the CEQ's categorical exclusions are appropriate, including many activities conducted by interstate natural gas companies pursuant to authority granted by FERC under blanket certificates and the installation of certain facilities located completely within existing rights-of-way.¹⁴ For larger-scale section 7(c) infrastructure construction and for LNG terminal construction under section 3(e), further NEPA review is required, often culminating in an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). Under FERC's regulations, if a project type is not categorically excluded from an EIS-type of in-depth environmental review, a project proponent is required to submit 13 resource reports¹⁵ with its application that provide environmental data and describe the anticipated impact of the proposed project, in order to support preparation of the NEPA analysis.¹⁶ FERC also requires the project proponent to consult with appropriate federal, regional, state, and local agencies during the planning stages of the proposed action to ensure that all potential environmental impacts are identified.¹⁷ A project proponent can also choose, or in instances involving LNG facilities, is required, to use FERC's pre-filing process, which serves to begin the NEPA analysis by involving relevant agencies and stakeholders and by allowing FERC staff to determine the scope of the NEPA review and to provide feedback on the resource reports, all before the project proponent files a formal application. The pre-filing process, when

¹¹ 15 U.S.C. § 717f(c).

¹² *Id.* § 717n(b).

¹³ 18 C.F.R. Part 380.

¹⁴ 18 C.F.R. § 380.4.

¹⁵ Note that because Resource Report 13 applies only to LNG projects, the practical result is that natural gas interstate pipeline infrastructure projects only file 12 resource reports.

¹⁶ 18 C.F.R. § 380.12.

¹⁷ 18 C.F.R. § 380.3(b)(3). *See also* 18 C.F.R. § 157.21.

used, can help facilitate agency coordination and identification of cooperating agencies for purposes of NEPA review.

EPAAct 2005 designated FERC as the lead agency for coordinating all applicable federal authorizations for interstate natural gas infrastructure development.¹⁸ This provision is vital due to the significant coordination necessary between FERC and other agencies, including, but not limited to, the Army Corps of Engineers, the Bureau of Land Management, the U.S. Fish and Wildlife Service (USFWS), the U.S. Forest Service, the Bureau of Reclamation, the National Park Service, the Advisory Council on Historic Preservation, the Bureau of Indian Affairs, State Historic Preservation Officers, and numerous state departments of environmental quality/natural resources. The involvement of different agencies in the NEPA process, and sometimes numerous offices within the same agency, is challenging and frequently results in delay when those agencies do not act in concert. INGAA believes that the FERC has done a good job facilitating agency coordination, within the limits of its authority.

Discussion

- 1. The role of the lead agency is to lead and shepherd a project through the environmental review process in a manner that avoids delay and duplication, sets clear timelines, and promotes concurrent, not sequential, actions by cooperating and coordinating agencies.**

The CEQ should revise the Draft Guidance to emphasize the role of the lead agency as the driving force, not merely a passive coordinator, in propelling the NEPA process forward. In this capacity, the lead agency is responsible for establishing and maintaining clear processes and timelines for federal, state and local agencies, being responsive to their concerns and questions, and gathering information to make informed decisions. Because more than one agency inevitably is involved in a natural gas infrastructure development or expansion project, the NEPA process should encourage a system that embraces coordination and cooperation between the agencies. This was mandated by EPAAct 2005: “[FERC] shall act as the lead agency for the purposes of coordinating all applicable Federal authorizations and for the purposes of complying with [NEPA].”¹⁹

The Draft Guidance is written too broadly and does not effectively facilitate better coordination between lead and cooperating agencies, in part because it does not distinguish well the roles of the lead agency and the cooperating agencies. To avoid duplicating efforts between agencies and to foster concurrent, rather than consecutive, actions, CEQ should more clearly define the roles of cooperating and coordinating agencies and should allow the lead agency to set review parameters and to exercise ultimate authority over the review process when a coordinating or cooperating agency causes a delay, duplicates efforts, or is otherwise impeding the NEPA process from moving forward. While FERC’s pre-filing process goes a long way to encourage such coordination and cooperation, certain NEPA-specific reviews continue to occur

¹⁸ 15 U.S.C. § 717n(b).

¹⁹ 15 U.S.C. 717n(b)(1).

in a sequential manner, rather than in parallel. One way to avoid duplicating agency efforts and to promote concurrent agency action is to require agencies to integrate, to the fullest extent possible, their EA/EISs with related surveys and studies required by other laws.²⁰ Indeed, most environmental reviews required by other laws can occur concurrently, but it has been INGAA members' experience that this process does not always occur on a regular basis.

For instance, even though the regulations implementing the National Historic Preservation Act (NHPA) allow federal agencies to coordinate compliance with NHPA section 106 and NEPA,²¹ agencies do not always take advantage of the streamlined procedure, opting instead for separate and sequential NEPA and NHPA reviews. CEQ should remind and strongly encourage federal agencies and other participants in the NEPA process to use the combined procedure. Moreover, agencies should use the coordinated section 106 and NEPA procedure when requested to do so by project proponents or provide a reasonable explanation for their failure to do so. CEQ should encourage lead agencies to evaluate whether analogous streamlined processes for conducting environmental studies and permit requirements are feasible for all aspects of the NEPA review.

Similarly, with respect to integration of NEPA and the Endangered Species Act (ESA), the USFWS's regulations require formal ESA section 7 consultation, to be concluded no later than 135 days after its initiation, unless extended by mutual agency agreement.²² Where formal section 7 consultation is required for a given project, the CEQ should direct agencies to initiate such consultation sufficiently early in the NEPA process, so that consultation is concluded and the USFWS issues its biological opinion no later than when the action agency issues its EA/EIS.

2. The efficient development of necessary infrastructure projects requires established and predictable timelines for conducting NEPA reviews.

The CEQ should require lead agencies to establish, and other agencies to follow, a schedule for the NEPA process. The CEQ should allow the agency to revise that schedule only under extraordinary circumstances and after consulting with the applicant. The schedule must be meaningful and enforceable to avoid the delays that often plague the NEPA process. Lead agencies should have the ability to enforce scheduled deadlines against other coordinating agencies, including state agencies involved in the process. More forceful direction from CEQ is in line with EAct 2005: "Each Federal and State agency considering an aspect of an application for Federal authorization shall . . . comply with the deadlines established by the [FERC]."²³

Another way in which the CEQ could encourage concurrent and not consecutive agency action is by providing guidelines for the amount of time that an agency should spend on various

²⁰ 76 Fed. Reg. at 77,497.

²¹ See 36 C.F.R. § 800.8. Federal agencies are encouraged to coordinate compliance with section 106 with any steps taken to meet the requirements of NEPA.

²² 50 C.F.R. § 402.14(e). Where an applicant is involved, the consultation cannot be extended more than 60 days without the applicant's consent. *Id.*

²³ 15 U.S.C. 717n(b)(2).

components of the NEPA process, including scoping, coordination with other agencies, preparing a draft NEPA analysis, responding to public comments, and finalizing a NEPA analysis. The current Draft Guidance merely summarizes the existing regulations, which fall short of providing an efficient NEPA process. CEQ should do more to provide a truly efficient process and this can be done without diminishing the requisite environmental considerations.

3. Non-governmental project proponents/applicants can and should be allowed to help facilitate the NEPA process by providing project and environmental information, meeting with agencies, organizing outreach efforts, and responding to questions relating to the project.

CEQ should clarify the role the project proponent/applicant should play in helping facilitate the NEPA process. CEQ should direct agencies to allow the project proponent/applicant to assist the agency throughout the NEPA process, without fear of claims of bias or undue influence. INGAA agrees with the CEQ that early integration of NEPA in the planning process is crucial,²⁴ but again the Draft Guidance does little more than reiterate the CEQ regulations on this point and is largely silent to an ongoing role for the project applicant. CEQ should provide more forceful direction on how this early and continuing integration must be accomplished.

Under FERC's NEPA-implementing regulations, the project proponent is required to consult with the appropriate federal, state, and local agencies during the *planning* stages of the proposed action. Making clear that the project proponent can play a facilitative role *throughout* the NEPA review, including both before and after an application is filed, would further the NEPA process, as the applicant is often in the best position to respond to questions and provide project information. For instance, the project proponent/applicant should explicitly be allowed to meet with agency officials to discuss the project schedule and other procedural items, scope revisions, and assist the agency in responding to public comments on the NEPA analysis.

Additionally, the Draft Guidance notes that, for actions initiated at the request of a non-federal entity, the agency may wait until the receipt of a complete application to commence the NEPA process.²⁵ Outside of the FERC pre-filing process and irrespective of the strength and leadership of a lead agency, if a project proponent has contacted an agency regarding the proponent's proposed project, the agency should not be allowed to wait until a complete application is filed to begin its NEPA review. As soon as the agency is aware that a project proponent intends to submit an application for agency authorization, the agency should be required to meet with the project proponent to understand details of the project, coordinate outreach with federal, state, and local agencies, and tribes, and delineate the NEPA process. It has been our experience that some agencies declare an application incomplete and use that declaration as a reason to delay the initiation of the NEPA process.

²⁴ 76 Fed. Reg. at 77,495.

²⁵ 76 Fed. Reg. at 77,496.

CEQ should encourage agencies to identify the specific information required in an application and acknowledge that it is appropriate for an applicant to submit additional information throughout the NEPA process. While FERC's regulations identify the specific information required in an application, other agencies' regulations fall short of the Draft Guidance requirement that:

Federal agencies should, whenever possible, guide applicants to gather and develop the appropriate level of information and analyses in advance of submitting an application or other request for federal agency action. For example, several agencies require an applicant to prepare and submit an environmental report to help prepare the NEPA analyses and documentation and facilitate the lead agency's independent environmental review of the proposal.²⁶

Similarly, the CEQ regulations governing scoping require the lead agency to invite the participation of the project proponent as soon as practicable after the agency decides to prepare an EIS.²⁷ Neither the regulations nor the Draft Guidance mention the actual role that the project proponent should play in the scoping process. The Draft Guidance should be revised to integrate better the role of the project proponent in the scoping process. Specifically, CEQ should encourage the project applicant to assist the agency and facilitate scoping, particularly in situations in which agencies rely on applicants to supply information related to the NEPA process.²⁸ In the scoping stage of a proposed action, project applicants can provide federal, state, and local agencies, as well as affected Indian tribes, with the best project information and can more easily respond to questions. Furthermore, once the agency initiates the scoping process, the project applicant should be invited to consult and participate in meetings and interagency coordination efforts regarding the NEPA process for the project. CEQ should clarify that this participation should continue throughout the NEPA process.

Conclusion

INGAA believes the Draft Guidance is a good opportunity for CEQ to help resolve common challenges faced by the pipeline industry with respect to timely completion of the NEPA process. INGAA is committed to minimizing adverse impacts to the environment and adherence to NEPA requirements, while helping provide clean-burning natural gas to meet the energy needs that fuel our nation's economy. INGAA reiterates its appreciation to CEQ for its attempts to improve the NEPA review process that can be an obstacle to the efficient and timely development of that infrastructure. INGAA echoes the recommendations of the President's Jobs Council and urges CEQ to do whatever it can to examine its Guidance and rules in order to promote a timely and predictable NEPA process. CEQ should clarify the role of the lead agency and the role of coordinating and cooperating agencies to avoid duplicating agency efforts and to promote concurrent agency action. CEQ should strongly encourage agencies to establish and

²⁶ *Id.*

²⁷ *See* 40 C.F.R. § 1501.7.

²⁸ *See* 18 C.F.R. § 380.3.

abide by predictable timelines for conducting NEPA reviews. CEQ also should recognize that project proponents are in a position to provide critical information to agencies and other consulting parties. Accordingly, CEQ should encourage project proponents to act as facilitators in the NEPA process.

Thank you for the opportunity to comment on CEQ's Draft Guidance. Please contact me if you have any questions.

Sincerely,



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