UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Guidance Manual for Environmental Report Preparation	**)** **)**	**Docket No. AD16-3-000**

COMMENTS OF THE INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA ON DRAFT GUIDANCE MANUAL FOR ENVIRONMENTAL REPORT PREPARATION

Pursuant to the request of the staff of the Federal Energy Regulatory Commission (FERC or Commission) in the *Notice of Availability of the Draft Guidance Manual for Environmental Report Preparation and Request for Comments*, issued on December 18, 2015, in the above-captioned docket, the Interstate Natural Gas Association of America (INGAA) submits the following comments on the Draft Guidance Manual for Environmental Report Preparation, Volumes I and II (Draft Guidance Manual or Guidance).

I. EXECUTIVE SUMMARY

INGAA appreciates the Commission's initiative to update its Guidance Manual for Environmental Report Preparation. Since it was published in 2002, there have been numerous developments both generally under the National Environmental Policy Act (NEPA) and the Council on Environmental Quality's (CEQ's) regulations thereunder, and, specifically, in the individual Commission certificate proceedings applying NEPA, the CEQ's regulations and the Commission's own regulations under NEPA. With the large increase in the number of comments submitted by stakeholders in certificate proceedings, the types and amount of

information required by FERC staff prior to issuing the environmental documents has grown significantly, as has the average duration of the environmental review.

INGAA agrees with the Commission's goal to provide industry with helpful guidance on preparing resource reports so applicants can increase the overall quality and consistency of data analyses. This, in turn, could help minimize or avoid delays in processing of certificate applications and lessen the need for extensive data requests.

Still, INGAA has identified a number of concerns in the Draft Guidance Manual – both in general and specifically related to individual resource reports – that it would like to highlight. INGAA requests that FERC staff finalize its Guidance Manual to reflect INGAA's proposed revisions, recommendations and clarifications.

1. The Draft Guidance is a not a substitute for regulation.

As FERC staff recognizes, a guidance document, while providing helpful information, does not substitute for regulations. As FERC staff notes, project sponsors are not required to use this Guidance Manual. However, INGAA remains concerned that failure by applicants to provide all of the information identified in the Guidance Manual could delay the issuance of environmental documents. INGAA also is concerned that other agencies or the public may view the Final Guidance as binding.

Accordingly, INGAA recommends that FERC staff explicitly state that the Guidance Manual is intended solely as guidance to the industry, is not a legislative rule, and is not an amendment to, nor does it supersede, the Commission's regulations under the Natural Gas Act (NGA), or the Commission's and the CEQ's regulations under NEPA.

Moreover, because FERC staff's application of the Commission's regulations and CEQ regulations may change more frequently than the Guidance is updated, INGAA suggests FERC

staff include a statement (language suggested) to confirm the intended use of the Guidance for stakeholders in Commission proceedings.

2. The Draft Guidance Manual should not take a one-size-fits-all approach.

As FERC staff correctly observes in the Draft Guidance Manual, "each project is unique." INGAA asserts that while the Draft Guidance Manual may provide valuable guidance for most projects, each certificate application must be supported on its own facts and circumstances. In fact, not all of the information identified by FERC staff in its "information recommended or often missing" list is relevant to all cases.

The Draft Guidance Manual's suggested documentation for the resource reports, while extremely helpful for larger or more contested projects, is overly inclusive and onerous for smaller or non-controversial projects. Specifically, project-specific circumstances (e.g., the size, scope, and location) or public or agency comments should determine the resource reports' requirements since project scope may vary widely, including a range of activities from new greenfield pipelines to the looping of existing pipelines, or new compressor stations, to modifications of an existing meter station that is subject to a blanket certificate.

INGAA requests that the Final Guidance Manual clarify that items identified as "recommended or often missing" are not uniformly applicable to all projects and that a project will not necessarily be delayed if such information is missing.

3. FERC Staff should re-evaluate timing of some deadlines.

INGAA is concerned that the Draft Guidance Manual, as written, fails to appreciate fully that an applicant can only provide certain information <u>after</u> the deadlines suggested in the Draft Guidance Manual. Much of the information revised in the Draft Guidance Manual, including items highlighted as "recommended or often missing," often is unavailable at the time a pipeline

files either the draft resource reports or the final resource reports with its certificate application. The information available and required to file a certificate application and related resource reports is not the same as the more complete information that will be developed during the application review process and which FERC staff will rely upon to make its certificate decision.

INGAA, in these comments, has attempted to denote the data that is appropriate and helpful to establishing substantial evidence to support the NEPA review process and the Commission's certificate and that data which is to be provided in compliance with post-certificate, post-construction conditions. While not objecting to companies having to provide much of the information specified in the Draft Guidance Manual, INGAA disputes the timing suggested in the Draft Guidance. The timing could be read to suggest that all of the information must be provided up front at the time of filing either a NGA section 7(c) application or a prior notice filing under the Commission's blanket certificate regulations.

4. INGAA supports FERC staff's cumulative impact guidance

INGAA appreciates FERC's guidance on how to comply with section 380.12(b)(3)'s requirement for applicants to identify cumulative effects on the relevant resources in each resource report. INGAA further appreciates the tables in Attachment 2, which provide examples of how to present the geographic and temporal scope for each resource and the types of projects considered in the cumulative impacts analysis. INGAA supports FERC staff's commentary in the Draft Guidance Manual, which specifies that the "size of the geographic area used in the cumulative analysis should be commensurate with the extent of direct and indirect impacts of the proposed project." However, and in part for this reason, INGAA disagrees with FERC staff's assertion that applicants for proposed operating stationary sources should consider cumulative impacts with other air emission sources within 50 kilometers of the project source.

5. INGAA's most significant concerns are focused on Resource Report 9 (Air and Noise Quality).

As noted, INGAA provides detailed comments on individual resource reports. However, it would like to note its significant concerns with the proposed Guidance Manual regarding Resource Report 9 because these revisions to the 2002 Guidance Manual would impose significant new technical, analytical requirements on project proponents, particularly pertaining to air quality and noise.

INGAA members are committed to complying with the Clean Air Act (CAA), securing required permits prior to construction, and providing information and data for FERC's environmental review and public disclosure under NEPA. To this end, INGAA offers suggested changes to the Draft Guidance Manual.

As proposed, INGAA has significant concerns regarding Resource Report 9. The changes appear to compel project proponents to perform air modeling that often is in addition to, and in some cases conflicting and/or less accurate, than the studies, analyses, and/or monitoring commitments provided to the federally-delegated state permitting agencies as part of their CAA permitting review process. Rather than require additional, unnecessary analyses, FERC should rely on the analysis, information and data that was collected under the authority of the state and federal agencies charged with protecting air quality under the CAA. INGAA asserts that the Commission will have satisfied its "hard look" under NEPA by relying on the federally-delegated state permits without requiring applicants to perform additional modeling.

Moreover, the Draft Guidance Manual appears to require all applicants to submit an AERMOD analysis for every proposed project. This is inappropriate when EPA itself recognizes and accepts the ability of an applicant to choose either modeling or monitoring to comply with the CAA. Further, some projects simply do not warrant modeling. The Draft Guidance

Manual's "one-size-fits-all" approach to reviewing air emissions associated with natural gas projects is contrary to NEPA and FERC's regulations, which contemplate reviews of potential impacts in a context-specific manner.

INGAA appreciates FERC's guidance on how to comply with section 380.12(b)(3)'s requirement for applicants to identify cumulative effects on the relevant resources in each resource report. INGAA further appreciates the tables in Attachment 2, which provide examples of how to present the geographic and temporal scope for each resource and the types of projects considered in the cumulative impacts analysis. INGAA supports FERC staff's commentary in the Draft Guidance Manual, which specifies that the "size of the geographic area used in the cumulative analysis should be commensurate with the extent of direct and indirect impacts of the proposed project." However, and in part for this reason, INGAA disagrees with FERC staff's assertion that applicants for proposed operating stationary sources should consider cumulative impacts with other air emission sources within 50 kilometers of the project source.

Related to Resource Report 9, INGAA, among other suggestions, recommends:

a. FERC should rely on analyses, modeling and requirements of the regulatory agencies with authority over air quality;

b. FERC should not rely exclusively on modeling for determining air impacts; and

c. FERC should tailor its NEPA analysis to the particular project.

Resource Report 9 also addresses noise issues. INGAA is concerned that the Draft Guidance Manual inappropriately expands the definition of noise-sensitive areas. Moreover, the Draft Guidance Manual appears to have intentionally deleted the option from its 2002 Guidance of allowing project proponents to estimate typical noise levels at new compressor station sites.

Instead, the Draft Guidance Manual specifies that project proponents must calculate sound level measurements.

In addition, the Draft Guidance Manual requests that applicants identify noise sensitive areas with 0.5 miles of proposed meter stations and provide acoustical analysis for such facilities. Since meter stations, particularly those involving smaller diameters and lower pressures and/or delivery volumes, are unlikely to produce noise levels comparable to those of compression stations, the Final Guidance should specify that such analysis only would be appropriate where concerns with potential noise emissions from meter stations have been raised.

INGAA requests that the Final Guidance Manual continue to reflect the current industry standard of using full octave band information for noise source emission levels as well as noise source mitigations.

II. DETAILED COMMENTS

A. General Comments

INGAA appreciates the Commission's initiative to update the 2002 version of its Guidance Manual for Environmental Report Preparation (2002 Guidance). Since 2002, there have been numerous developments both generally under the National Environmental Policy Act (NEPA) and the Council on Environmental Quality's (CEQ's) regulations thereunder, and, specifically, in the individual Commission certificate proceedings applying NEPA, the CEQ's regulations and the Commission's own regulations under NEPA. In addition, with the increase in the number of comments submitted by stakeholders in certificate proceedings, the types and amount of information required by FERC staff prior to issuing the environmental documents has increased significantly, and the average duration of the environmental review has likewise increased.

Pipelines agree with the Commission's goal to provide industry helpful guidance on preparing resource reports so that applicants can increase the overall quality and consistency of data analyses. This Guidance could help minimize or avoid delays in the processing of certificate applications and decrease the need for extensive data requests. However, INGAA is concerned that the Draft Guidance Manual may not appreciate fully that an applicant can only provide certain information *after* the suggested deadlines outlined in the Draft Guidance Manual.

Much of the information revised in the Draft Guidance Manual, including that highlighted as "recommended or often missing," often is unavailable at the time a pipeline files either the draft resource reports or the final resource reports with its certificate application. In fact, some of the information does not become available until detailed engineering and design for formal front end engineering design (FEED) studies are completed, which often is developed in consultation with participating or cooperative agencies, in parallel with the certificate application process. Agency consultation and refinement during FEED is a part of the iterative nature of the pre-filing and certificate application processes. The information available and required to file a certificate application and related resource reports is not the same as the more complete information that will be developed during the application review process and which FERC staff will rely upon to make its certificate decision. Accordingly, INGAA has attempted to denote the data that is appropriate and helpful in establishing substantial evidence to support both the NEPA review process and the Commission's certificate and that data which is to be provided in compliance with post-certificate, post-construction conditions. Therefore, INGAA is not objecting to companies having to provide much of the information specified in the Draft Guidance Manual. However, INGAA disputes the timing suggested in the Guidance, which could be read to suggest that all of the information must be provided up front at the time of filing

either a Natural Gas Act (NGA) section 7(c) application or a prior notice filing under the Commission's blanket certificate regulations.

As FERC staff recognizes, the Draft Guidance Manual "provides helpful information about *required* [emphasis added] environmental documentation, but does not substitute for the regulations."[1] "[P]roject sponsors … who prepare, use, or review these types of documents are not required to use this manual."[2] The Draft Guidance Manual further states that it identifies the environmental documentation the FERC staff "recommend[s] be included in the resource reports" and "will assist project sponsors in preparing complete filings." In addition, Section 1.1 states that project sponsors "are not required to use this manual." Notwithstanding these statements, INGAA is concerned that failure to provide all of the information identified in the Draft Guidance Manual could delay the issuance of environmental documents or that the Final Guidance may be viewed as binding by other agencies or the public. To avoid confusion regarding the intended application of the Guidance, FERC staff should explicitly state that the Guidance Manual is intended solely as guidance to the industry, is not a legislative rule, and is not an amendment to, nor does it supersede, the Commission's regulations under the NGA, or the Commission's and the CEQ's regulations under NEPA.

Furthermore, FERC staff's application of the Commission's regulations and CEQ regulations may change more frequently than the Guidance Manual is updated. As a result, FERC staff should include a statement similar to the following statement, which would provide confirmation of the intended use of the Guidance Manual for stakeholders in Commission

[1] p. 1-1.
[2] *Id*.

proceedings. Such a statement is consistent with the Office of Management and Budget's Final Bulletin for Agency Good Guidance Practices.[3]

> This guidance represents the FERC staff's current position on environmental report preparation. It does not create nor confer any rights on any person and is not binding on the Commission or member of the public. This guidance is not intended to, and does not, supersede the CEQ NEPA regulations or the Commission's regulations implementing the NGA or NEPA.

Further, there are a number of instances in which the Draft Guidance Manual overstates and/or indeed misstates the application filing requirements identified in the Part 2, 157, and 380 regulations. It is against the Administrative Procedure Act to set "minimum" filing requirements and other required categories of information without promulgating the specific applicable regulations that go along with such requirements.[4] INGAA will identify these instances as they pertain to discussion topics including Resource Reports 5, 9 and 12, when INGAA discusses its other comments and concerns associated with each individual resource report or report filing recommendation.

INGAA agrees with the Draft Guidance Manual's observation that the "information provided here should apply to most, if not all, projects" and that "each project is unique."[5] Therefore, while the Draft Guidance Manual attempts to be inclusive regarding the information required for most projects, "the information required to develop a complete application for one

[3] 72 Fed. Reg. 3432 (Jan. 25, 2007) (providing that guidance documents should "aim to communicate effectively to the public about the legal effect of the guidance" and that the draft guidance "does not create or confer any rights for or on any person or operate to bind the public") (internal citation omitted).

[4] Guidance that binds the actions of an agency in charge of its implementation is a legislative rule and not a statement of policy. *See e.g., Syncor Int'l Corp. v. Shalala*, 127 F.3d 90, 94 (D.C. Cir. 1997) ("[P]olicy statements are binding on neither the public nor the agency.") and *Appalachian Power Co. v. EPA*, 208 F.3d 1015, 1022 (D.C. Cir. 2000) (striking down an EPA guidance document for being improperly issued without notice-and-comment rulemaking after finding that it expanded the scope of an existing EPA rule and constituted "marching orders" to the states, and making clear that if a headquarters-issued document "leads private parties or State permitting authorities to believe that it will declare permits invalid unless they comply with the terms of the document, then the agency's document is for all practical purposes 'binding.'").

[5] p. 1-1, P 4.

project may not be the same as that needed for another project."[6] INGAA asserts that while the Draft Guidance Manual may provide valuable guidance for most projects, each certificate application must be supported on its own facts and circumstances. "One-size-fits-all" should not apply.[7]

In fact, not all of the information identified by FERC staff in its "information recommended or often missing" list is relevant to all cases. Therefore, INGAA believes that FERC staff's suggested documentation in its resource reports, while extremely helpful for larger or more contested projects, is overly inclusive and onerous for smaller or non-controversial projects. Specifically, project-specific circumstances (e.g., the size, scope, and location) or public or agency comments should determine the resource reports' requirements since project scope may vary widely, including a range of activities from new greenfield pipelines to the looping of existing pipelines or new compressor stations, to modifications of an existing meter station that is subject to a blanket certificate. Therefore, INGAA requests that the Final Guidance clarify that items identified as "recommended or often missing" are not uniformly applicable to all projects, and that a project will not necessarily be delayed if such information is missing. Similarly, consistent with the Draft Guidance Manual's statement that "the information required to develop a complete application for one project may not be the same as that needed for another project," INGAA requests that FERC staff preface the entirety of the Final Guidance with a statement similar to that made in the introduction to the section of the document on Resource Report 10, wherein FERC staff accurately states that "analysis… should

[6] p. 4-1, P 3.

[7] Indeed, the Commission's regulations already recognize this "one size doesn't fit all" through the implementation of its blanket certificate program. Environmental reports dealing with blanket certificate prior notice applications inherently are not going to be as expansive as environmental reports associated with major pipeline projects and the Final Guidance needs to recognize the flexibility of an applicant to tailor its environmental reports to be consistent with the authority it is requesting.

be driven by the extent and type of resource impacts and by public or agency comments."[8] This is consistent with 18 C.F.R. § 380.12(a)(2), which states that the "detail of each resource report must be consistent with the complexity of the proposal and it's potential for environmental impact."

Further, INGAA requests clarification on FERC staff's classification of items as "minimum filing requirements" (refer to Attachment 1), "full filing requirements" (refer to Attachment 1), and "information recommended or often missing" (refer to the tables at the beginning of each individual resource report discussion). INGAA requests clarification that:

a. The minimum filing requirements are required of every pipeline applicant at the time of filing a certificate application lest the pipeline risks the application being rejected.

b. The "full filing requirements" are not all required when the applicant files its application or prior notice filing. The applicant is required, unless the requirement is not applicable per Commission regulation, at some point during the certificate application process or as a condition to the certificate order, to meet the full filing requirements (unless the applicant makes the case that the filing requirement is not applicable).

c. The "information recommended or often missing" is information that FERC staff has found helpful but that is not necessarily required by 18 C.F.R. § 380.12. A pipeline's application will not be rejected if the pipeline application fails to include all of the information identified as "information recommended or often missing." INGAA suggests that the Final Guidance Manual should be consistent with 18 C.F.R. § 157.8(c) which states that an application will not be rejected unless it "patently fails to comply with applicable statutory requirements or applicable Commission rules" and will not be rejected if environmental reports are incomplete "because the company has not been granted access…to perform required surveys" or "where the minimum checklist requirements of part 380…have been met."

INGAA suggests that the Final Guidance be reorganized with all of the filing requirements, both minimum and full, and items considered to be recommended or often missing combined in one location in the Draft Guidance Manual, rather than separated both by individual resource report and in Attachment 1. INGAA also requests that the Final Guidance add the

[8] p. 4-125.

sample data that existed in the 2002 version of the Guidance back into the tables for each resource report. Applicants found the example data provided in the sample tables of the 2002 version of the Guidance very informative and helpful.

Finally, INGAA asks for clarification on the applicability of these guidelines. Specifically, if an applicant has already submitted its application or draft resource reports before the Guidance Manual is finalized, the FERC review process should continue to move forward with these projects, and not delay the project (by requiring the applicant to update its resource reports) when the Guidance Manual become final.

B. FERC's Pre-filing Process

INGAA disagrees with the Draft Guidance Manual's statement in Section 3.0 that the pre-filing process is "required…for projects for which the applicant proposes to submit an applicant-prepared draft EA."[9] This statement is contrary to 18 C.F.R. § 157.21, which indicates that the pre-filing process is mandatory only for liquefied natural gas (LNG) terminal facilities and related jurisdictional natural gas facilities. Accordingly, INGAA requests that the FERC staff either delete the phrase "and for projects for which the applicant proposes to submit an applicant-prepared draft EA" or amend the Final Guidance to state that FERC staff "recommends" that applicants who intend to submit an applicant-prepared draft EA participate in pre-filing. The discussion presented in Section 5.0, *Preparation of Applicant-Prepared Draft Environmental Assessments for Natural Gas Act Section 7 Applications*, similarly should be revised.

Additionally, the Draft Guidance Manual provides that, "As indicated in section 157.21, an application should not be filed until at least 180 days after the Director of Office of Energy

[9] p. 3-1.

Projects (OEP) issues a notice commencing the pre-filing process."[10] However, FERC's pre-filing regulations applicable to other natural gas facilities (i.e., not LNG terminals or related facilities), at section 157.21(b), indicate that prospective applicants are *not precluded from* filing an application at an earlier date (i.e., less than 180 days after the commencement of the pre-filing process), if necessary. The Final Guidance should be revised to reflect this overstatement.

INGAA agrees with FERC staff that there should be flexibility in the pre-filing process. Specifically, the Draft Guidance Manual notes that, "The prospective applicant is not required to adhere to the prescribed timeframes identified in section 157.21(f) if project-specific issues warrant extensions and the pre-filing process is extended beyond 6 months."[11] Nonetheless, the Draft Guidance Manual appears to endorse a rigid pre-filing timeline. For example, the Draft Guidance Manual states, "Once the Director of OEP issues a notice commencing the pre-filing period, the prospective applicant must complete activities and file certain documents and reports in accordance with section 157.21(f), which specifies timeframes for these actions (i.e., the commencement of the pre-filing period "starts the clock" for these items.)"[12] The Final Guidance should reflect FERC staff's existing discretion to allow for flexibility in the pre-filing process and to adjust the prescribed section 157.21(f) timeframes.

C. Cumulative Impacts

INGAA appreciates FERC's guidance on how to comply with section 380.12(b)(3)'s requirement for applicants to identify cumulative effects on the relevant resources in each resource report.[13] INGAA further appreciates the tables in Attachment 2, which provide examples of how to present the geographic and temporal scope for each resource and the types of

[10] *Id*. at P 2.
[11] *Id*.
[12] p. 3-3, P 1.
[13] *See* pp. 4-7 - 4-10 and Attachment 2.

projects considered in the cumulative impacts analysis. INGAA supports FERC staff's commentary in the Draft Guidance Manual, which specifies that the "size of the geographic area used in the cumulative analysis should be commensurate with the extent of direct and indirect impacts of the proposed project."[14] However, and in part for this reason, INGAA disagrees with FERC staff's assertion that applicants for proposed operating stationary sources should consider cumulative impacts with other air emission sources within 50 kilometers of the project source. INGAA will address this issue more fully in its comments pertaining to Resource Report 9.

D. Resource Report 1 – General Project Description

1. Section 4.1.2.1 Pipeline Facilities

The Draft Guidance Manual advises applicants to describe the widths of the construction right-of-way and permanent right-of-way for each proposed pipeline. It requires applicants to:

> Provide typical right-of-way cross-section diagrams depicting each proposed configuration (e.g., greenfield, construction adjacent to or overlapping other pipelines or utilities, reduced right-of-way width in wetlands, various topsoil segregation methods). *Identify the pipeline segment(s) and mileposts where each cross-section diagram applies. Include a table that identifies by milepost where the proposed pipeline would be adjacent to existing rights-of-way and quantify the overlap (width and acreage) of the construction and permanent rights-of-way where applicable.* (emphasis added)[15] [16]

The Draft Guidance Manual specifies the content that should be included in such diagram drawings. INGAA asserts that the diagram guidance is burdensome with little perceived value or benefit. Further, it would be difficult, particularly in congested areas, to reflect every possible scenario for pipeline offset distances from all adjacent utilities, as well as workspace overlap with all adjacent rights-of-way, particularly when the orientation of utilities may be inconsistent (i.e., the arrangement of pipeline and utilities within a right-of-way may vary). INGAA sees

[14] p. 4-8.
[15] p. 4-22, Section 4.1.2.1.
[16] The Draft Guidance Manual has similar language in Resource Report 8. INGAA has the same concerns as described herein regarding providing the diagram drawings with such specificity.

little or no value in providing typical right-of-way cross section diagrams for all adjacent right-of-way configurations. Under such guidance, such drawings would far surpass the notion of representing "typical" information. Additionally, INGAA notes that offset distances from existing utilities and the overlap of work areas and easements with existing rights-of-way will not be finalized until easement agreements are negotiated, which often occurs after the date a certificate application is filed. Accordingly, INGAA suggests that FERC staff revise the Final Guidance to state that pipeline applicants "identify the pipeline segment(s) and mileposts where the proposed pipeline would be adjacent, co-located or parallel to existing rights-of-way *for extended mileage or over significant distances*."

2. Section 4.1.3.1 Pipeline

In addition to standard construction procedures, FERC staff has a more detailed, bulleted list of requirements for projects that require offshore construction or dredging, jetting, or plowing for the installation of the offshore pipelines or shipping facilities.[17] The construction plan and schedule can generally be described during pre-filing, but the logistics of vessel and equipment selection, volume of excavation material and disposal locations, calculation of pile types and depths, and availability of geotechnical and hazard surveys cannot be provided within the filing timelines of Resource Report 1.[18] Much of this information is developed after consultation with Bureau of Safety and Environmental Engineering (BSEE), Coastal Zone Management (CZM), and U.S. Army Corps of Engineers (USACE).

[17] pp. 4-29 - 4-30.

[18] Similarly, INGAA has concerns with Section 4.7.1 of the Draft Guidance regarding Resource Report 7 that would require offshore pipelines to "describe by segment and milepost the physical and chemical characteristics of the sediments that would be disturbed. Specify the data sources used …." *See* p. 4-86. An offshore pipeline would not have prepared this geotechnical survey when it makes its initial certificate filing.

3. Section 4.1.5 Future Plans and Abandonment

The Draft Guidance Manual advises applicants to "Provide the information on the current or reasonably foreseeable plans for future expansion or abandonment of the project, *or other reasonably foreseeable projects on the same system*." (emphasis added)[19] The italicized language is additive to the 2002 Guidance, and seems to expand beyond the intent of the 2002 Guidance, as well as the applicable regulation at section 380.12(c)(8), to ensure that foreseeable plans for modification of project facilities (not unrelated or independent activities) are assessed fully in FERC's environmental review. INGAA recognizes that CEQ regulations require FERC to conduct a cumulative impacts analysis and consider the potential segmentation of projects under NEPA. Nonetheless, the language "other reasonably foreseeable projects on the same system" is too broad, as it could be read to require a pipeline to attempt to identify and summarize potential projects across the pipeline's entire system, both large and small,[20] including many that have no geographic or relevant operational connection with the project at issue. In this instance, FERC staff should revert back to the 2002 version of its guidance on this topic and delete the phrase "or other reasonably foreseeable projects on the same system."

4. Section 4.1.6 Permits and Approvals

The Draft Guidance Manual advises applicants to identify all federal, state, and local permits and consultations for the project, including "all permits the applicant plans to apply for and obtain, including permits that could be subject to federal preemption."[21] INGAA requests the Final Guidance reconsider its guidance regarding the identification of all state and local permits and consolations described in Section 4.1.6, including the requirement in footnote 10 to

[19] p. 4-31.
[20] In addition to facilities proposed in section 7(c) certificate applications, pipelines install many facilities under the Commission's blanket certificate or section 2.55 regulations. Whether large or small, only those projects that have a sufficient nexus to the project under review should be identified in Resource Report 1.
[21] p. 4-31, fn. 10.

list permits that could be subject to federal preemption.[22] The identification of all state and local permits and ordinances is an unnecessary burden on applicants particularly since such information is not necessarily available during the NEPA review process. Throughout the regulatory process, including after the issuance of the certificate, applicants are coordinating with local agencies in accordance with the Commission's guidance to determine whether an applicant would need to apply for a permit or whether an ordinance would apply to construction activities. Thus, the information identified in Section 4.1.6 may not be available in the time frame contemplated by the FERC staff or the collection of such information would require applicants to spend an inordinate amount of time and resources to identify all such permits and the applicability of local ordinances.

Further, identification of those permits and ordinances in the record and in the project's environmental document is not required for the FERC staff to satisfy the NEPA requirements and may, in fact, create confusion or ambiguity on whether those permits and approvals, or compliance with those ordinances, are required. Should FERC staff continue to request applicants to identify permits and/or ordinances that could be subject to federal preemption, the FERC staff should not include those permits in the environmental document or they should clarify that the conclusions in the environmental document are not based on receipt of those permits. Identification of those permits could be interpreted that such permits are required, which would convene long-standing Commission policy providing:

> Any state or local permits with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate…However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or

[22] The same comment would apply to the requirements in Section 4.9.2.2, p. 4-121.

unreasonably delay the construction or operation of facilities approved by this Commission.[23]

5. Section 4.1.8 Nonjurisdictional Facilities

The Draft Guidance Manual states that "FERC may need to consider the environmental impact of related nonjurisdictional facilities that would be constructed for the purpose of delivering, receiving, or using the proposed gas volumes."[24] Yet, the Draft Guidance Manual also notes that nonjurisdictional facilities are typically included in FERC's cumulative impacts analysis and requests applicants to provide a lengthy list of information regarding the identified nonjurisdictional facilities, including auxiliary facilities and facilities built by other companies.[25] INGAA notes that the Draft Guidance Manual omits discussion of the four-factor test from the nonjurisdictional facility discussion, despite the fact that the four-factor test is codified in section 380.12(F) of the Commission's regulations.

Since certain information regarding nonjurisdictional facilities is not readily available to applicants, particularly non-public information related to facilities built by other companies, INGAA recommends that the Final Guidance recognize that an applicant will not always be able to provide all of the detailed information about nonjurisdictional facilities that are not under the applicant's control. At a minimum, INGAA recommends inserting the phrase "provide the following information when feasible" to recognize the practicality that an applicant will not be able to access all of this information. Additionally, as described in the 2002 version of the Guidance Manual, the four-factor test is a useful tool to determine "whether there is sufficient Federal control and responsibility over a project as a whole to warrant environmental analysis of

[23] *See Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988). *See also, Dominion Transmission, Inc. v. Summers*, 723 F.3d 238 (D.C. Cir. 2013) ("FERC's certificate preempts all local requirements that regulate in the same field as the NGA…") and *Algonquin LNG v. Loqa*, 79 F. Supp.2d 49 (D.R.I. 2000) ("because the federal regulatory scheme comprehensively regulates …natural gas facilities, there is no room for local zoning or building code regulations on the same subjects.").
[24] p. 4-33, Section 4.1.8.
[25] PP. 4-33-4-34, Section 4.1.8.

portions of the project outside of its direct sphere of influence." Since the four-factor test assists applicants in determining where additional consideration may need to be focused for related nonjurisdictional facilities, INGAA recommends that the FERC staff add back discussion of the four-factor test into the Final Guidance. Further, the FERC should clarify that submittal of evidence of resource agency consultation and concurrence for non-jurisdictional facilities, when feasible, is only appropriate for those activities where the applicant determines, based on exercise of the four-factor test, that the activities should be included in the FERC's environmental review.

E. Resource Report 2 – Water Use and Quality

The Draft Guidance Manual specifically allows for reliance on desktop or other data (e.g., NWI mapping, remote sensing, etc.) to identify wetland and waterbody resources in areas where survey permission is denied or seasonal conditions preclude access.[26] Where such data is relied on, the features and resources utilized must be specifically identified. INGAA supports this revision from the 2002 Guidance.

1. Section 4.2.2 Surface Water Resources

FERC acknowledges the difference between its definition of "waterbodies" and the Environmental Protection Agency's (EPA's) "waters of the United States,"[27] but in the revised Draft Guidance Manual, FERC staff also requests that applicants identify ephemeral and intermittent waterbodies,[28] as well as dry swales or dry washes,[29] in project applications. This request differs from, and exceeds, the requirement to identify "perennial waterbodies," as codified in the Commission's regulations at section 380.12(d)(1). Additionally, the revised Draft

[26] pp. 4-41 and 4-47.
[27] *See* p. 4-39, fn. 11.
[28] p. 4-35.
[29] p. 4-39.

Guidance Manual states that applicants should include dry swales and dry washes in the discussion of waterbody construction and mitigation procedures since FERC considers such features as waterbodies if there is water flowing in them at the time of construction.[30] As FERC staff points out, the FERC's *Wetland and Waterbody Construction and Mitigation Procedures* (FERC Procedures) establish the long-standing FERC definition of a waterbody (Section I.B), and the FERC Procedures also specify the construction and mitigation procedures that applicants must implement during the crossing of features that meet FERC's definition of a waterbody (i.e., having perceptible flow at the time of crossing). FERC staff's request for identification of ephemeral or intermittent streams and dry swales and dry washes is inconsistent with FERC regulation, adds unnecessary complexity, and is overly burdensome, particularly so given that standing FERC environmental requirements already govern the treatment of "waterbody" features during construction. Further, this new request would create conflict with FERC staff's requirement to conduct a wetland delineation using the current federal methodology and file a wetland delineation report (as specified in Section VI.A.1 of the FERC Procedures, section 380.12(d)(4) of the Commission's regulations, and the Revised Guidance), since many ephemeral streams, dry swales, and dry washes would not meet the federal definition of a "water of the United States."

For these reasons, the Final Guidance should avoid requesting applicants to identify ephemeral and intermittent waterbodies, as well as dry swales and dry washes. INGAA instead requests that FERC staff clarify that only those features reasonably expected to meet the FERC's established definition of a waterbody during construction (e.g., perennial waterbodies, waterbody features identified in delineation reports, etc.) should be identified and discussed in applications.

[30] p. 4-46.

2. Section 4.2.2.1 Contaminated Sediments

For projects involving contaminated sediments, the Draft Guidance Manual appears to mandate that the applicant develop and submit a sediment sampling plan and physical/chemical analysis, while the 2002 Guidance left decision on such site-specific analysis to the outcome of agency consultation.[31] INGAA requests that the Final Guidance Manual readopt the flexibility from the 2002 Guidance Manual.

3. Section 4.2.2.3 Floodplains

The Draft Guidance Manual requests that applicants identify and describe facilities placed in floodplains and analyze lost flood storage capacity within the applicable floodplain. Section 4.2.2.3 also requires an applicant to "Describe efforts to avoid, minimize, and mitigate impacts within floodplains and justify why the facilities must be placed within floodplains."[32] As linear facilities, pipelines must unavoidably traverse floodplains, as well as associated waterbodies, on a regular basis. However, since pipelines are installed below ground, and surface contours are restored following construction, their installation has no effect on floodplain storage capacity. INGAA, therefore, requests that the Final Guidance clarify that only aboveground facilities sited within designated floodplain areas, and subject to floodplain permitting, would need to provide the requested data and discussion.

4. Section 4.2.3.2 Construction and Operation Impacts on Wetlands

The Draft Guidance Manual requests applicants to describe compensatory mitigation for "permanent conversion of woody wetland types to other wetland cover types"[33] (not just permanent wetland losses/fill). This may differ (and exceed) typical compensatory mitigation requirements in some USACE Regulatory Districts (e.g., many USACE districts do not require

[31] *See* p. 4-43.
[32] p. 4-44, Section 4.2.2.3.
[33] p. 4-50.

mitigation or compensation for activities that result in wetland conversion). An applicant's compensatory mitigation plans should meet the USACE's mitigation requirements and regulatory standards. The Commission should neither require nor encourage a pipeline to implement greater or different, potentially conflicting, mitigation plans from those developed in consultation with the applicable lead/permitting agency for wetland resources.

The Draft Guidance Manual also requests additional detailed information on compensatory mitigation plans, including location of mitigation sites, responsible party, proposed mitigation, etc., which may be unknown at the time the applicant submits its certificate application (i.e., compensatory mitigation plans would typically be finalized in consultation with the USACE during the Section 404 permit process which may occur much later in the certificate process). The Final Guidance should acknowledge the primacy of the USACE's role in establishing compensatory mitigation plans, as well as the timing for when such plans would typically be finalized.

F. Resource Report 3 – Fish, Wildlife, and Vegetation

1. Section 4.3.4 Endangered, Threatened, and Special Status Species

The Draft Guidance Manual states that applicants should include in the FERC application recent copies of species lists from the relevant agencies and tribes. In particular, "applicants should provide a copy of the [Fish and Wildlife Service's (FWS's)] Information Planning and Conservation (IPaC) Trust Resource Report (or the FWS, Ecological Services Field Office's official species list for the project area) *dated no more than 90 days prior to submittal to FERC.*" (emphasis added) [34] INGAA requests that the italicized language should be revised to recognize that applicants should submit current and applicable FWS species lists or clearance letters, as issued or stamped by the FWS.

[34] p. 4-60.

Moreover, the Draft Guidance Manual provides that "If the FWS and/or NOAA Fisheries have issued clearance letters stating that no listed or proposed species would be affected, but the project has since been modified …*or clearance letters are more than 1 year old*, contact the FWS and/or NOAA Fisheries to determine if updated letters are required and provide copies of updated documentation." (emphasis added)[35] Since FWS and/or NOAA's clearance letters commonly will have expiration dates, INGAA recommends that FERC staff revise the Final Guidance to read, in relevant part, "or clearance letters are more than 1 year old, *unless otherwise noted in the clearance letters*."

G. Resource Report 4 – Cultural Resources

INGAA did not identify any concerns with Resource Report 4.

H. Resource Report 5 – Socioeconomics

The Draft Guidance Manual incorrectly states that Resource Report 5 "is required if the applicant proposes … major pipeline projects."[36] Since section 380.12(g)(1) of the Commission's regulations indicate that Resource Report 5 is "required only for applications involving significant aboveground facilities," FERC staff should revise its Final Guidance to correct this misstatement of the regulatory requirements.

I. Resource Report 6 – Geological Resources

INGAA did not identify any concerns with Resource Report 6.

J. Resource Report 7 – Soils

INGAA has no additional comments on Resource Report 7, other than the issue identified in footnote 18.

[35] *Id.*
[36] P. 4-69.

K. Resource Report 8 – Land Use, Recreation and Aesthetics

1. Section 4.8.1.3 Facility Abandonment/Replacement

The Draft Guidance Manual requires pipelines to "describe the type of pipeline coating on the pipeline and fixtures being abandoned and *state whether it contains asbestos*." (emphasis added)[37] FERC staff advises that if the pipe coating does contain asbestos, "describe the procedures to dispose of the coating, procedures to ensure worker health and safety, and how abandonment activities would comply with the Toxic Substances Control Act (TSCA)."[38] INGAA requests that the Final Guidance remove these requirements. First, a pipeline may not know whether the coating on a pipeline to be abandoned contains asbestos until work physically begins and samples of the pipeline coating are obtained and tested. Second, there are Department of Labor Occupational Safety and Health Administration (OSHA), EPA and Department of Transportation (DOT) regulations that govern asbestos disposal and worker safety that control this area.[39] Further, every pipeline operator has internal procedures and controls in place that govern company specific protocols on the lawful treatment and disposal of pipeline with asbestos coating.[40] Accordingly, INGAA requests that the Final Guidance not require this information in Resource Report 8.

L. Resource Report 9 – Air and Noise Quality

1. Air Quality

INGAA members are committed to complying with the Clean Air Act (CAA), securing required permits prior to construction, and providing information and data for FERC's

[37] p. 4-102, Section 4.8.1.3.
[38] *Id.*
[39] 29 C.F.R. §§ 1910.1001, 1926.1101 (the OSHA General Industry and Construction asbestos regulations); 40 C.F.R. Part 61, Subpart M (the EPA, NESHAP for asbestos); and 49 C.F.R. Parts 171 and 172 (the DOT regulations).
[40] INGAA has the same request as it relates to Resource Report 9 and the asbestos-related information requested therein. *See* p. 4-117.

environmental review and public disclosure under NEPA. To this end, INGAA offers suggested changes to the Draft Guidance Manual. As proposed, INGAA has significant concerns regarding Resource Report 9 because the changes appear to compel project proponents to perform air modeling that often is in addition to, and in some cases conflicting and/or less accurate, the studies, analyses, and/or monitoring commitments provided to the federally-delegated state permitting agencies as part of their CAA permitting review process. In many cases, it would impose significant new technical, analytical requirements on project proponents beyond what the CAA and many states require. Rather than require additional, unnecessary analyses, FERC should rely on the information that is collected under the authority of the state and federal agencies charged with protecting air quality under the CAA. INGAA asserts that the Commission will have satisfied its "hard look" under NEPA by relying on the federally-delegated state permits without requiring applicants to perform additional modeling. Moreover, the Draft Guidance Manual appears to require all applicants to submit a modeling analysis for every proposed project. This is inappropriate when EPA itself recognizes and accepts the ability of an applicant to choose either modeling or monitoring to comply with the CAA. Further, some projects simply do not warrant modeling. The Draft Guidance Manual's "one-size-fits-all" approach to reviewing air emissions associated with natural gas projects is contrary to NEPA and FERC's regulations, which contemplate reviews of potential impacts in a context-specific manner.

a. FERC Should Rely on Analyses, Modeling and Requirements of Regulatory Agencies with Authority over Air Quality.

The Draft Guidance seeks to impose a number of standards and requirements for analyzing potential cumulative impacts associated with air quality. While INGAA agrees that an applicant should address air quality in its certificate application, it should be sufficient for a

pipeline to provide the Commission with its state agency permits, and that should fully satisfy FERC's NEPA analysis. As INGAA noted earlier, a significant portion of the projects subject to the proposal trigger a variety of obligations under the CAA (and comparable state laws) that necessarily incorporate the required analysis of air quality impacts and modeling and identification of appropriate mitigation measures. These required analyses ensure that all relevant environmental impacts have been or will be considered as part of the permitting and approval process, by the very agencies that Congress tasked with doing so, and that appropriate mitigation measures have already been identified and will be applied as a condition of project approval. Rather than requiring project proponents to "reinvent the wheel" with time-consuming and excessive analyses, FERC can rely on the many studies and reviews that must already be performed under the authority of the state and federal agencies charged with protecting air quality, which is the intent of the NEPA requirements. FERC should adopt the analyses and conclusions relied upon by the state agency when it issued its permit. FERC should only require an applicant to provide AERSCREEN, a refined air dispersion model, or additional modeling that the pipeline proponent has agreed to as a part of its permit, when the state permitting agency required it pursuant with primary jurisdiction under the CAA required it.

Indeed, some of these agencies, specifically EPA and corresponding state and local environmental agencies, have been granted the *primary* responsibility to gather and analyze emissions and air quality data, develop and review air quality models, determine what levels of air quality impacts are acceptable, and identify what level of controls are necessary and appropriate to mitigate those impacts. Given these agencies' primacy in these areas, FERC should incorporate the agencies' analyses, findings and requirements (either by reference or entirely).

FERC's historic approach of relying on existing analyses and regulatory requirements satisfies its legal obligation to appropriately evaluate environmental impacts without unnecessary duplication of efforts.[41] Accordingly, the Final Guidance Manual should provide FERC staff the maximum flexibility to continue to rely on these other existing analyses in future determinations.

Specifically, given EPA's and federally-delegated state agencies' primacy in these areas, FERC should incorporate the analyses resulting from EPA's National Ambient Air Quality Standards (NAAQS), state implementation plans (SIPs), New Source Review (NSR), New Source Performance Standards (NSPS), and National Emission Standards for Hazardous Air Pollutants (NESHAP) regulations by reference in FERC's environmental documents (either the EA or EIS). Projects subject to review will comply with all applicable SIP requirements – requirements that EPA itself has already confirmed will ensure compliance with the NAAQS within the deadlines set forth by Congress. When two agencies (EPA and the relevant state) already have concluded that compliance with the SIP will ensure compliance with the NAAQS, and when those agencies are appropriately implementing and enforcing SIP requirements for the project in question, those findings and actions provide a reasonable basis for FERC to conclude that the project will not cause significant air impacts. *See* the Appendix for a full discussion of how and why these other federal regulations protect the air quality from a new or modified facility and should satisfy FERC's NEPA analysis.

The Draft Guidance Manual also provides that the applicant should "*demonstrate* that pollutant emissions from proposed emission-generating units *meet all applicable federal Clean Air Act provisions* and permit requirements (New Source Performance Standards, PSD, National Emission Standards for Hazardous Air Pollutants, and Title V), and *show compliance* with the

[41] *See Sierra Club v. U.S. Army Corps of Eng'rs*, 295 F.3d at 1215 ("Agencies are not required to duplicate the work done by another federal agency which also has jurisdiction over a project.").

National Ambient Air Quality Standards (NAAQS), state implementation plans (SIP), General Conformity, and/or state standards and permits as applicable."(emphasis added)[42] INGAA asserts that issuance of a permit to construct air emission emitting equipment is, according to the CAA, a demonstration in and of itself, that the source will meet all applicable federal CAA provisions. No state air program allows the issuance of a permit to construct a new source without compliance with all applicable requirements.[43]

Furthermore, every source operating within the geographic boundaries subject to the CAA already have an affirmative obligation to comply with the SIP and any other applicable standards and permit conditions. Non-compliance with any of these statutes constitutes an affirmative obligation to report and take immediate corrective actions and subjects the facility to immediate enforcement.[44] The Draft Guidance Manual's requirement that a pipeline "*show compliance* with the National Ambient Air Quality Standards (NAAQS), state implementation

[42] p. 4-113.

[43] *See e.g.*, 35 Ill. Adm. Code § 201.160(a) ("No construction permit shall be granted unless the applicant submits proof to the Agency that [t]he emission unit or air pollution control equipment will be constructed or modified to operate so as not to cause a violation of the [Clean Air] Act or of this Chapter …"); Iowa Admin. Code 567-22.3(455B) ("In no case shall a construction permit which results in an increase in emissions be issued to any facility which is in violation of any condition found in a permit involving PSD, NSPS, NESHAP, or a provision of the Iowa state implementation plan"); 326 Ind. Admin. Code 2-5.1-3(c) (requiring that any person proposing the construction of a new source prepare a permit application that provides specified information "to evaluate compliance consistent with the permit terms and conditions, the underlying requirements of this title and the CAA, the ambient air quality standards …, or the prevention of significant deterioration maximum allowable increase …"); K.A.R. 28-19-301(d) ("No construction permit or approval shall be issued if the department determines that the air contaminant emissions from the source will interfere with the attainment or maintenance of any ambient air quality standard that has been established under the provisions of the federal clean air act … or under the provisions of state law"). *Similarly, facilities that are subject to Title V permitting requirements must identify all applicable requirements in their applications. See, e.g.*, LAC 33:111.517.D (specifying information required in Part 70 permit applications, including "citation and description of all applicable Louisiana and federal air quality requirements and standards"); Iowa Admin. Code 567-22.3(455B) (specifying Title V application requirements including the requirement to supply "information related to the emissions of air pollutants sufficient to verify which requirements are applicable to the source"); 326 Ind. Admin. Code. 2-7-4(c) (providing that an application for a Part 70 operating permit requires "identification and a description of all points of emissions … in sufficient detail to establish the … applicability of requirements of the CAA").

[44] *See e.g.*, Neb. Admin. R. & Regs. Tit. 129, c. 8, § 007.01 ("Any permit noncompliance shall constitute a violation of the State Act and the [Clean Air] Act, and is grounds for enforcement action …"); Okla. Admin. Code 252:100-8-1.3(b) ("An owner or operator who violates any condition of a permit or authorization is subject to enforcement under the Oklahoma Clean Air Act"); 567 Iowa Admin. Code 22.108(5) & (9) (specifying that air operating permits must provide for "prompt reporting of deviations from permit requirements" and a general statement that "permit noncompliance constitutes a violation of the Act and is grounds for enforcement action").

plans (SIP), General Conformity, and/or state standards and permits as applicable" pursuant to NEPA analyses is overly broad, redundant, and conflicts with the general NEPA requirement for the lead federal agency to cooperate with the state and local agencies to reduce duplication.

In addition, the Draft Guidance Manual provides that an applicant should indicate how it would demonstrate conformance with the applicable SIPs in accordance with 40 C.F.R. § 93.158.[45] INGAA comments that the federally delegated state agency is responsible for maintaining compliance demonstrations via the permitting process. See, e.g., 42 U.S.C. § 7410(2)(C) ("Each implementation plan … shall … include a program to provide for the enforcement of the [plan's control] measures … and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program …"] Accordingly, as argued above, applicants should be assumed to have adequately demonstrated "conformance with the applicable SIPs…" upon project authorization and sufficient general conformity analysis.

b. FERC Should Not Rely Exclusively on Modeling for Determining Air Impacts.

As discussed above, the proposed Guidance Manual appears to require applicants to conduct modeling for LNG facilities and compressor stations, even for those projects that do not require such analyses under state or federal air permitting requirements. Requiring the use of AERMOD specifically creates concern since EPA, state and local agencies, and industry are aware of limitations with AERMOD and are working to find more appropriate modeling alternatives. Because the AERMOD model was not designed for a one-hour standard to measure small sources with short stacks such as compressor stations, it over-predicts air impacts to local

[45] p. 4-115.

and regional areas. In fact, studies comparing AERMOD dataset predictions with actual observed impacts demonstrate that AERMOD predictions overestimate actual monitored impacts by a factor of two or more.[46] These studies strongly weigh in favor of using actual monitoring data for air impact analyses, as AERMOD predictions are showing to be inaccurate and overly conservative. To ensure an accurate assessment of air quality risks posed by a proposed project, FERC should continue accepting alternate air impact analyses using actual monitoring data from representative sources, rather than requiring the use of AERMOD (or equivalent) for all projects. FERC should also accept the alternative analyses accepted by state permitting agencies for issuance of the applicant's air permit (either other types of modeling or monitoring).

c. FERC Should Tailor Its NEPA Analysis to the Particular Project.

By "urging" all applicants to prepare a Resource Report 9 "for all projects" - not just applications involving compressor facilities at new or existing stations, and for all new LNG facilities - and by appearing to require all applicants to model using AERMOD, the Draft Guidance Manual treats all projects the same. The Guidance Manual does not account for a project's particulars or its context, or even considering the magnitude of its potential impacts. FERC staff should replace its proposed "one-size-fits-all" approach to air impacts analysis with an approach that allows FERC staff to tailor its analysis to the project being analyzed.

The Draft Guidance Manual overlooks this important aspect of NEPA review. Rather than accounting for the specific context of each project – including the project type, its location,

[46] For example, the Wainwright, Alaska dataset which evaluated five Caterpillar diesel-fired engines showed that the highest modeled predicted concentration using Plume Volume Molar Ratio Method (PVMRM) – the plume algorithm for NO conversion to NO2 – was almost a factor of two greater than actual monitored observations (i.e., AERMOD maximum predicted 1-hour NO2 concentration of 130 micrograms versus 73 micrograms observed monitored impact for short engine stacks) (Evaluation of NO2 predictions by the plume volume molar ratio method (PVMRM) and ozone limiting method (OLM) in AERMOD using new field observations. (Hendrick, Tino, Hanna, Egan) July, 2013). In another example, as a condition to permitting, the Wyoming Department of Environmental Quality (WYDEQ) required 1-year of NO2 ambient monitoring from two gas plants. Based on the data results, WYDEQ concluded that the AERMOD results over predicted measured NO2 impacts by a factor of three to four.

the environmental setting, and the amount of analysis already performed on it – the proposal would subject all projects to the same burdensome and unnecessary level of review. For example, the proposal appears to require project proponents to perform air modeling for any project irrespective of the scope or significance of its potential impacts and irrespective of whether those impacts already have been analyzed and modeled in another way. *See e.g.*, proposed Guidance Manual at p. 4-118 ("For new compressor stations or storage facilities, provide an air quality analysis demonstrating that emissions of criteria pollutants would not result in exceedance of the NAAQS or applicable state standards.") This type of uniform analysis is incompatible with NEPA and FERC's implementing regulations.

A more appropriate approach under NEPA would be to review projects based on both the scope, applicability, requirements and analyses already required under EPA's other existing regulatory programs and the context of the project at issue. INGAA asserts that an applicant should only be required to do a SCREEN modeling or AERMOD when the delegated state agency requires it, or the pipeline proponent has offered to perform the analysis as a part of the CAA permitting process.

Further, section 380.12(k)(3) of the Commission's regulations require that applicants "[e]stimate the impact of the project on air quality, including how existing regulatory standards would be met." The specific information required to meet this standard focuses on (i) emissions rates and (ii) permit applications for major sources. *See id.* at § 380.12(k)(3)(i)-(ii) ("Provide the emission rate of nitrogen oxides from existing and proposed facilities"; "For major sources of air emissions (as defined by the Environmental Protection Agency), provide copies of applications for permits to construct (and operate, if applicable) or for applicability determinations under regulations for the prevention of significant air quality deterioration and subsequent

determinations.") INGAA is concerned that as worded the Draft Guidance Manual appears to require modeling when the applicable regulation requires only emission rates and permit applications for major sources. INGAA requests that FERC staff give pipeline operators the flexibility on how they will comply with the Commission's regulations, including section 380.12(k)(3), and not provide a prescriptive requirement that project proponents model for all projects.

d. The Draft Guidance Manual Erroneously Creates a 50 Kilometer Radius for Cumulative Impact Review Which Is Overly Broad.

EPA has established emission thresholds for major stationary sources and major modifications at existing sources for air permitting to ensure that the air quality is preserved to protect human health and the environment. Additionally, states evaluate the air quality within its boundaries based on ambient air monitors and comprehensive modeling of each stationary source in the airshed, using annual emission inventory report data for air quality planning, and provide this data in the State Implementation Plan to EPA to demonstrate compliance with the NAAQS. A pipeline proponent already includes a cumulative air analysis in the demonstration of compliance with air quality requirements by the federally-delegated permitting authorities. The Draft Guidance Manual requires that all operating stationary sources (e.g. compressor stations, LNG facilities, storage facilities) develop an inventory of stationary sources, their locations, and emissions that considers the cumulative impacts with these air emission sources within 50 kilometers (km) of the project source. While the 50 km criteria may be based on the maximum useful distance the EPA-approved model may calculate,[47] the 50 km is arbitrary and overly

[47] *See* 40 C.F.R. Part 51, Appendix W Section 6.2.3. The Appendix W Guideline on Air Quality Models recognizes the limitations of Gaussian plume model used for the evaluation of stationary sources in Section 6.2.3: "Section 165(d) of the Clean Air Act requires that suspected adverse impacts on PSD Class I areas be determined. However,

broad to be used for all projects. INGAA proposes that the applicant perform its cumulative air impact analysis consistent with the approach taken with the federally-delegated state agency with authority to issue CAA permits. The applicant should provide the Commission with the same impact analysis and subsequent demonstration records that it provided the state agency.

The state agency with federally-delegated authority evaluates sources on a case-by-case basis and requires an analysis consistent with its SIP to ensure federal obligation to comply with NAAQS. Therefore, a state should decide the analysis requirements for, as an example, a green-field compressor station project whose worst case emissions scenario has criteria pollutant concentrations less than five percent of the NAAQS at the facility fence line, with impacts decreasing substantially as the distance from the facility increases. In this example, the 50 km criteria would extend beyond the requirements of the federally-delegated state agency that is required by law to prevent cumulative impacts on local and regional air quality. FERC has previously concluded that state permitting programs will prevent significant cumulative impacts and additive permanent air quality impacts:

> In addition, TGP was required to obtain air quality permits for operation of each compressor station and/or modification for the . . . Projects from the Pennsylvania Department of Environmental Protection (PADEP), the New York State Department of Environmental Conservation, and the New Jersey Department of Environmental Protection. DTI was also required to obtain a minor source air quality permit for the . . . Compressor Station from the New York State Department of Environmental Conservation. *The state permitting requirements would enforce the federal and state regulations designed to protect ambient air quality (thereby protecting public health and welfare) and prevent significant cumulative impacts.* For these reasons, we conclude that

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50km is the useful distance to which most steady-state Gaussian plume models are considered accurate for setting emission limits."

> there would be no significant additive permanent air quality impacts from the projects.[48]

The required analyses, as part of compliance with the CAA, demonstrate that all relevant environmental impacts have been or will be considered as part of the permitting and approval process, by the very agencies that Congress charged with doing so under the CAA, and that appropriate mitigation measures have already been identified and will be applied as a condition of project and permit approval.[49] As discussed above, approval by the relevant federally-delegated authority provides reasonable support that the cumulative model addresses the overall cumulative impacts on local and regional air quality, as appropriate.

INGAA believes that this multi-layered air quality review satisfies FERC's analytical obligations under NEPA and prevents the potential for "double-counting" the air quality impacts of the project. Existing (authorized) facilities have already been included in a cumulative impacts review prior to obtaining authorization to construct and operate. Further evaluation of existing facilities would effectively "double count" the air quality impacts and would not be representative of the true impacts of the project currently under review. Accordingly, INGAA recommends the Final Guidance Manual delete the requirement that "in the case of a project involving expansion of an existing compressor station, the cumulative impact analysis should take into account the operational air quality and noise impacts of the *existing facilities* (past action) and the impacts of the proposed new facilities." (emphasis added).

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[48] *Tennessee Gas Pipeline Co., LLC*, 153 FERC ¶ 61,215 (2015), Supplemental Environmental Analysis at 28 (emphasis added); *see also id.* at 61-62 (evaluating cumulative impacts in the same way).

[49] 40 C.F.R. §1506.2 requires the [lead] Agency to cooperate with State and local agencies to reduce duplication between NEPA and comparable state and local requirements. Federal courts have recognized that federal agencies should avoid duplication of analysis. *See e.g., Town of Barnstable v. FAA*, 740 F.3d 681, 691 (D.C. Cir. 2014) (holding NEPA does not require FAA to duplicate Interior Department's NEPA analysis when it would serve no purpose); *Sierra Club v. U.S. Army Corps of Eng'rs*, 295 F.3d 1209, 1215 (11th Cir. 2002) ("Agencies are not required to duplicate the work done by another federal agency which also has jurisdiction over a project."); *Ohio Valley Envtl. Coal.*, 556 F.3d at 196 ("NEPA plainly is not intended to require duplication of work.").

e. Additional comments regarding air quality.

i. Information recommended or often missing should not require air modeling for the entire compressor station.

The Draft Guidance Manual provides in its list of "information recommended or often missing" from Resource Report 9, "Provide air quality modeling for *entire compressor station.*… Wherever possible, this report should quantify the impacts of the project on the existing air and noise environment and describe any proposed measures to mitigate those impacts." (emphasis added)[50] INGAA recommends rewording recommended information from "Provide air quality modeling for entire compressor stations" to "Provide an air quality modeling report that conforms to state modeling guidance for emission increases due to project emission sources at compressor stations." As stated above, this change will make it consistent with federal and state air permitting processes. States have developed guidance for air quality modeling based on federal regulations and have federal delegation of authority to implement measures to achieve and maintain national primary and secondary ambient air quality standards. Rather than defining the scope of the modeling analysis broadly, INGAA recommends FERC staff rely on the authority of the state and federal environmental agencies charged with protecting the air quality.

ii. FERC staff should not require short-term and long-term impacts of operation.

The Draft Guidance Manual also states that an applicant "should present short-term (acute) and long-term (chronic) impacts of operation of any new facilities (compressor stations, LNG facilities, storage facilities, meter stations, etc.), as well as additions or modifications to existing facilities."[51] INGAA recommends that FERC staff remove the sentence identified

[50] p. 4-112.
[51] pp. 4-112 – 4-113.

above from the Final Guidance Manual since it is overly broad and subject to interpretation. For example, construction of new pipeline and appurtenant facilities such as meter stations as part of a looping project is typically exempt from air permit requirements. Requiring acute and chronic impacts review for such projects is unnecessary. Further, the Guidance Manual adequately explains the methodology for quantification of air emissions and noise levels and impact analysis for both short term (hourly or 24-hour) and long term (annual) through modeling for projects requiring air permits. The evaluation of model results with the existing ambient levels and federal, state or local standards for demonstration of compliance is well addressed in the Guidance Manual Sections 4.9.1.3 and 4.9.2.3. INGAA requests FERC staff remove the sentence, "The resource report should present short-term (acute) and long-term (chronic) impacts of operation of any new facilities (compressor stations, LNG facilities, storage facilities, meter stations, etc.), as well as additions or modifications to existing facilities," as it may require project proponents to conduct analyses beyond the federal and state regulatory programs governing air emissions.

iii. The demonstration that Class I areas would not be adversely affected should be within 10 km.

The Draft Guidance Manual provides that applicants, "Demonstrate that Class I areas *within 100 kilometers* would not be adversely affected by compressor stations or LNG facilities subject to PSD permitting."[52] (emphasis added) INGAA comments that the demonstration should be limited to 10 km, consistent with existing federal PSD regulations (40 C.F.R. § 52.21(b)(23)(iii)) "…associated with a major stationary source or major modification, which would construct within *10 kilometers of a Class I area*, and have an impact on such area equal to or greater than 1 µg/m^3, (24-hour average)."

[52] p. 4-114.

iv. General Conformity

The Draft Guidance Manual requires applicants to provide a comparison of project-related direct and indirect emissions with General Conformity (40 C.F.R. § 93.153) applicability thresholds if the project would be within a nonattainment or maintenance area for the NAAQS.[53] It further requires applicants to include all construction emissions and those operational emissions not covered under a major or minor NSR permit. INGAA recommends FERC staff remove the following text: "Provide a comparison of project-related direct and indirect emissions with General Conformity (40 C.F.R. § 93.153) applicability thresholds if the project would be within a nonattainment or maintenance area for the NAAQS. Include all construction emissions and those operational emissions not covered under a major or minor New Source Review Permit." Instead, INGAA requests that the Final Guidance Manual read: "Provide a comparison of project-related construction and operational emissions with General Conformity (40 C.F.R. § 93.153) applicability thresholds if the project would be within a nonattainment or maintenance area for the NAAQS." This recommended revision provides better clarity.

v. The reference to CEQ's draft guidance regarding changes in carbon storage should be deleted.

The Draft Guidance Manual references CEQ's "Revised Draft Guidance for Greenhouse Gas Emissions and Climate Change Impacts."[54] INGAA recommends that FERC staff remove the footnote in its Final Guidance Manual as the CEQ's guidance document is in draft stage and the methodology for quantification of GHG impacts is not a final document at this time. Moreover, as demonstrated by the comments filed with CEQ by INGAA and others, CEQ's draft guidance violated seminal Supreme Court precedent and, accordingly, should be withdrawn.

[53] p. 4-115.
[54] p. 4-11, fn. 15.

vi. FERC staff should not specify or require the use of particular construction emission models.

The Draft Guidance Manual provides that calculations for construction emissions should be undertaken using the following EPA modeling and data resources in order of precision: (1) Motor Vehicle Emission Simulator (MOVES), (2) NONROAD model, and (3) AP-42, Compilation of Air Pollutant Emission Factors. Guidance for using each of these is available on the EPA website. INGAA states that FERC staff should remove the identification of specific model names/identifiers in its Final Guidance Manual and instead should state that modeling of construction related (non-operational) emissions should be completed consistent with equivalent (current and future) EPA-approved methods.

2. Noise Quality

The Draft Guidance Manual expands the examples of Noise Sensitive Areas (NSAs) from the 2002 Guidance to include "parks and wilderness areas and recreational areas valued specifically for their solitude and tranquility."[55] Visitors to parks and wilderness areas are a transient population who are not likely to experience any potential noise impacts for more than a brief period. Moreover, the Commission has stated that parks are not classified as NSAs subject to the 55 dBA L_{dn} limit.[56] Therefore, the Final Guidance Manual should revert to the 2002 version of its Guidance Manual for the examples of NSAs.

Section 380.12(k)(2) of the Commission's regulations provides that "For proposed new compressor station sites, measure or estimate the existing ambient sound environment based on current land uses and activities." Accordingly, the 2002 Guidance Manual indicated that applicants should "calculate the existing L_{dn} from sound level measurements, or estimate using

[55] p. 4-113.
[56] *Tex. E. Transmission, LP & Algonquin Gas Transmission, LLC, Order Issuing Certificates and Approving Abandonment*, 139 FERC ¶ 61,138, at P 40 (2012). ("Parks are neither classified as NSAs subject to the 55 dBA limit nor treated as such . . . .").

typical noise-levels for a land use type, such as in the EPA publication Community Noise (EPA, 1971)." However, in the Draft Guidance Manual, FERC staff seems to have intentionally deleted the option of estimating typical noise-levels,[57] instead specifying that existing L_{dn} must be calculated from sound level measurements. Although sound level measurements may provide more accurate existing sound level data in some instances, the option to estimate noise levels using established and accepted protocols, particularly in rural areas, locations where NSAs are somewhat distant from the proposed compressor station site, or where access may be denied, should not be precluded, especially when specifically allowed by applicable FERC regulation. In this instance, FERC staff should revert to the text from the 2002 Guidance Manual.

Similar to the previous comment, and as it relates to construction noise associated with horizontal directional drilling (HDD), the Draft Guidance Manual mandates completion of ambient noise surveys (i.e., sound level measurements) and acoustical analysis for NSAs within 0.5 miles of HDDs.[58] By doing so, FERC staff is requesting the same level of field-based sound level measurement and impact analysis for a minor construction related activity that is typically completed in less than a week's time as it does for a major compressor station that typically will run continuously for many years. Given the extremely differing impact profiles, the level of requisite analysis to assess potential impacts should be different as well. In particular, acoustical analysis of potential HDD noise impacts also should be able to rely on accepted land use based estimates of typical noise levels, rather than site-specific ambient sound surveys, particularly within rural areas. As with the discussion of noise level estimates for NSAs near new compressor stations, FERC staff should not mandate a "one-size-fits-all" requirement for completion of ambient noise surveys associated with HDDs that ignores the potential for other

[57] *See* p. 4-121.
[58] p. 4-122.

accepted protocols. Further, the Draft Guidance Manual should be revised to specify that analysis of HDD noise impacts, and associated mitigation, only would be applicable to those locations where construction would occur during nighttime hours (10 p.m. to 7 a.m.).

The Draft Guidance Manual also requests applicants to identify NSAs within 0.5 mile of proposed meter stations as well as provide an "acoustical analysis" for such facilities.[59] As meter stations, particularly those involving smaller diameters and lower pressures and/or delivery volumes, are unlikely to produce noise levels comparable to those of compressor stations, FERC staff should clarify further this request (i.e., only applicable to meter and regulator stations anticipated to emit noise levels exceeding 55 dBA L_{dn} outside the property boundary), and/or specify that such analysis only would be appropriate where concerns with potential noise emissions from meter stations have been raised.

Further, the Draft Guidance Manual requires noise data to be presented in 1/3 octave bands for each source and for each noise mitigation source.[60] Currently, the industry standard is to provide acoustic data and to evaluate noise emissions levels as overall A-weighted levels or full (i.e., 1/1) octave bands. Because one third octave band source data "is beyond typical industry practice... Equipment noise data expressed in 1/3 octave bands will …not be available for a majority of equipment."[61] Further, presenting noise data in 1/3 octave bands:

> is not required by applicable regulations and does not improve the accuracy of the noise calculation for purposes of determining compliance with applicable regulatory limits on noise emission levels. Measuring noise levels in 1/3 octave bands adds no value in determining overall noise emission levels for purposes of assessing the environmental impact of a proposed compressor station. Instead, use of full octave bands is sufficient for performing such site noise emission level calculations, and is consistent with current industry practice.[62]

[59] p. 4-123.
[60] p. 4-123.
[61] Comments of GE; Docket No. AD16-3.
[62] Comments of Solar Turbines; Docket No. AD16-3.

Therefore, INGAA requests that the Final Guidance continue to reflect the current industry standard of using full octave band information for noise source emission levels as well as noise source mitigations (i.e., delete the reference to 1/3 octave bands).

The Draft Guidance Manual adds a requirement that for HDD, Direct Pipe Installation and Storage Wells, the applicant must describe noise mitigation that would be implemented during drilling operations to reduce noise impacts at the NSAs to a level below 55 dBA L_{dn} or 48.6 Leq or no more than 10 dBA over background if ambient levels are above 55 dBA L_{dn}.[63] However, in Section 7.1 of the Draft Guidance Manual, *Standard Environmental Conditions Under Blanket Certificates – Section 157.206(b)*, it appears that a certificate holder must "conduct any HDDs or drilling of wells that will occur between 10 p.m. and 7 a.m. with the goal of keeping the perceived noise at any pre-existing NSA at or below an L_n of 55dBA."[64] The requirements of Section 7.1 are less restrictive than that given in Section 4.9.2.3. Since the requirements of Section 7.1 are consistent with section 157.206 of the Commission's regulations (ie., an L_n of 55dBA), INGAA requests that Section 4.9.2.3 of the Draft Guidance Manual be revised accordingly.

M. Resource Report 10 – Alternatives

The Draft Guidance Manual on system alternatives states that the analysis "should include…alternative configurations the applicant considered to its own system and *system alternatives involving one or more other companies' facilities.*" (emphasis added)[65] Further, "examples of alternatives using other companies' facilities should include an examination of the

[63] p. 4-122.
[64] p. 7-3.
[65] p. 4-127, Section 4.10.3.

current capacities of existing systems and an assessment of those systems' ability to individually or in combination meet the objectives of the proposed project."[66]

INGAA requests FERC staff revise the Final Guidance Manual to recognize that this level of analysis on other companies' facilities would require access to other companies' proprietary, non-public data, which is not possible. While a pipeline can provide publicly available data regarding other pipelines' capacity, it cannot perform detailed flow modeling based on such public data. Similarly, an applicant will not be privy to an understanding of the operational or commercial constraints governing the ability of another operator's pipeline to potentially meet the project objectives or purpose and need of the applicant's proposal. Further, it is inappropriate for an applicant to posit on potential modifications to a pipeline system over which it has no control, much less the appetite of another pipeline system's operator to engage in such modifications. For these reasons, INGAA requests that the Final Guidance Manual remove this suggested data.

N. Resource Report 11 – Reliability and Safety

With regard to "information recommended or often missing" in Resource Report 11, the Draft Guidance Manual lists as bullet 2: "Provide a list of mainline valves and for each one indicate whether the applicant proposes to use automatic, remote, or manually operated valves. Provide a justification for the use of each type."[67] INGAA requests that the Final Guidance Manual recognize that a pipeline likely will not have this information up front in its initial filing. The pipeline's determination of what valves to use and where to site them is often determined during the design phase and is subject to change. Further, since Pipeline and Hazardous Materials Safety Administration (PHMSA) regulates pipeline safety, INGAA does not

[66] *Id.*
[67] p. 4-138.

understand why an applicant should be requested to justify each type of valve to be used in its certificate application. PHMSA, not FERC, has regulations which set minimum requirements for location and design parameters on valves. PHMSA also sets requirements on valve maintenance and remedial action.[68]

Further, the Draft Guidance Manual provides that an applicant should discuss how the project would comply with "(or exceed) the DOT Minimum Federal Safety Standards specified in 49 CFR 192…"[69] INGAA requests that the Final Guidance Manual remove "(or exceed)" since pipelines are designed to meet applicable regulatory standards and requirements established by the Department of Transportation.

The Draft Guidance Manual also indicates that applicants should explain the potential hazard of collocation of pipelines or compressor stations adjacent to high voltage electric transmission lines, as well as provide any analyses performed or mitigation proposed to address such hazards. INGAA notes that such analysis (e.g., cathodic protection interference studies) would not typically be performed prior to an initial filing.[70] Such a study is often completed during the detailed engineering and post application design phase, once easement agreements (and associated offset distances) are finalized. Further, the ability of a pipeline to address these issues during the certificate stage is often dependent on the electric utility's easement negotiation process, which typically extends well past the certificate application stage.

O. Resource Report 12 – PCB Contamination

Section 380.12(n) of the Commission's regulations provides that Resource Report 12 is only required for applications involving the replacement, abandonment by removal, or abandonment in place of pipeline facilities determined to have PCBs in excess of 50 parts per

[68] *See* 49 C.F.R. §§ 145, 179 and 745.
[69] p. 4-138, Section 4.11.2.2.
[70] p. 4-139, Section 4.11.2.2.

million in pipeline liquids. Yet, the Draft Guidance Manual would require submittal of Resource Report 12 for all applications involving the replacement, abandonment by removal, or abandonment in place of facilities. Further, all applicants would be required to provide a statement (i.e., "Resource Report 12 must contain…") that the proposed activities would comply with an "Approval to Remove Natural Gas Pipeline Contaminated with PCBs and Dispose of PCBs" permit from EPA. These revisions to the Draft Guidance Manual on Resource Report 12 far exceed the scope of the applicable FERC regulation and cannot be implemented without a rulemaking.

INGAA notes that companies do not need an EPA permit to dispose of PCB pipeline liquids. Such waste may be managed under the Resource Conservation and Recovery Act (RCRA)[71] provisions at an appropriately permitted Transportation, Storage, Disposal Facility. As provided in the Draft Guidance Manual, a pipeline applicant would be placed in the position of always having to consult with the FERC project manager if it followed the requirements in the regulations because EPA would not need to issue a disposal permit. Instead, an applicant should be provided the opportunity to describe how pipeline liquids containing PCBs above regulatory action levels would be managed instead of requiring an arbitrary consultation with the FERC project manager.

Additionally, FERC has added new language regarding abandonment/replacement of pipeline with PCB levels < 50 ppm.[72] TSCA does not regulate pipelines abandonment/replacement activities when PCBs are not present in pipeline systems at concentrations of 50 ppm or greater.[73] Therefore, it is unnecessary for an applicant to explain how it would comply with TSCA, when TSCA does not apply. FERC should revise its Final

[71] 40 C.F.R. § 761.65.
[72] p. 4-140, P 3.
[73] 40 C.F.R. § 761.60(b)(5).

Guidance Manual to allow an applicant to state how PCB pipeline liquids (waste) will be managed instead of requiring a consultation since operating companies do not need an EPA disposal permit as discussed above. Due to the significant flaws identified above, the Draft Guidance on Resource Report 12 should be abandoned entirely, and FERC staff should revert to the original text provided in the 2002 version of the Guidance Manual with the correction to the original text allowing applicants to state how PCB waste including pipeline liquids will be managed to comply with TSCA regulations.

P. Resource Report 13 – Additional Information Related to LNG Plants

INGAA supports the comments made by the engineering companies that have filed comments to Volume II of the Draft Guidance[74] and recognizes that they are the experts on developing the front end engineering and design documents used to develop Resource Reports 11 and 13 for LNG projects. INGAA appreciates their expertise and the time they have taken to provide detailed comments on the Guidance document in Volume II. As such, INGAA notes that the additional detail set forth in the Guidance Manual is extensive and, in some cases, not even feasible for an applicant to obtain or if feasible, would require extensive outside study and speculation. For example, applicants typically provided 100 or 500 year return periods for natural hazards, Sections 13.3.3-7 now request loads up to 10,000 year return period and Section 11.6 requires applicants to provide details on facility design life (e.g., 30-50+ years) for purposes of determining time dependent design conditions. Accordingly, INGAA requests the Commission to fully review the experts' comments.

As an initial matter, INGAA submits that all of the introductory general comments set forth above in Section 1 apply equally to the Guidance set forth in Volume II. The issue of the

[74] *See, e.g.*, Comments filed by CB&I dated January 19, 2016, and Comments filed by CH-IV dated January 22, 2016, and comments filed by GexCon US dated January 28, 2016.

timing of providing the information required in the Guidance is even more heightened in Volume II. Specifically, although the guidance states that the "level of detail to be submitted in Resource Report 13 will require front end engineering design (FEED) of the complete facility," the guidance requires more than what most LNG contractors typically develop during the FEED phase.[75] Indeed, the new Draft Guidance Manual requires information that is normally not available until the detailed design phase of the project development or later.[76] As with Volume I, the Draft Guidance Manual should not be read to suggest that all of the Volume II information must be provided up front at the time of filing. Finally, INGAA also submits that the applicability of Volume II Draft Guidance also should not be applied retroactively for projects that already have been certificated. Further, if an applicant has already submitted its application, or draft resource reports before the Guidance Manual is finalized, the FERC review process should continue to move forward with these projects, and not delay the project (by requiring the applicant to update its resource reports) when the Guidance Manual become final.

Finally, several sections in the Draft Guidance Manual may be inconsistent with the law that has recently been developed as the result of the development of LNG import and export terminals. Sections 13.1.1.5 and 13.1.4 and Appendix 13.A.5 of Volume II of the Draft Guidance Manual request a description and drawings regarding feed gas pipeline routes and destinations and the number of feed gas pipelines and interconnects.[77] In order for an applicant to provide this information, it would require much speculation on the part of the applicant, to which it might not even have access. INGAA requests that the Final Guidance Manual clarify

[75] *See id.*
[76] In several cases, the Draft Guidance Manual requests extensive vendor data. While the primary vendors for the main pieces of the liquefaction equipment are typically selected in advance to perform FEED, the other major and minor vendors are not always selected until the detailed design stage. Similarly, Instrumentation, Electrical, and Mechanical parts of the work are not developed during FEED to an extent that would meet the detail requirements set forth in the Guidance.
[77] *See* Volume II of Draft Guidance Manual at 23, 24, and 101.

that the information requested is consistent with the Commission's precedent.[78] Otherwise, the information referenced in the Draft Guidance appears to overstep information that even the Commission has stated is not germane to its decision-making because of open access transportation and the extent of the interstate pipeline grid.[79]

Similarly, Volume II requests information on shipping and product destinations.[80] Regarding LNG to be exported outside of the United States and shipping routes and destinations, this information is outside the scope of the Commission. The Commission has previously described that,

> Congress transferred the regulatory functions of section 3 of the NGA to the Secretary of Energy in 1977 pursuant to section 301(b) of the Department of Energy Organization Act. The Secretary subsequently delegated to the Commission authority to '[a]pprove or disapprove the construction and operation of particular facilities, the site at which such facilities shall be located, and with respect to natural gas that involves the construction of new domestic facilities, the place of entry for imports or exit for exports . . . ." However, the Secretary *has not delegated* to the Commission any authority to approve the import or export of

[78] *See* 18 C.F.R. § 157.21(a)(3) (2015).

[79] Specifically, the Commission has stated that the scope of any impacts associated with upstream production and transportation are not "reasonably foreseeable" so LNG applicants should not be required to engage in such speculation. *Dominion Cove Point LNG, LP*, Order Granting Section 3 and Section 7 Authorizations, 148 FERC ¶ 61,244 (2014) ¶ 231, *aff'd*. 151 FERC ¶ 61,095 (2015) ¶¶ 22-44. *See also, e.g.*, *Trunkline Gas Company, LLC*, Order Granting Section 3 and Section 7 Authorizations and Approving Abandonment, 153 FERC ¶ 61,300, at ¶¶ 127-138 (2015). In particular, the Commission stated that,

> While it is axiomatic that natural gas exports require natural gas supplies, the source of the gas to be exported via any individual project is speculative and would likely change throughout the operation of the project. The Cove Point Liquefaction Project will receive natural gas through the Cove Point Pipeline, which, as described above, will interconnect with three interstate natural gas pipeline systems. Those interstate pipelines cross multiple shale-gas, as well as conventional-gas, plays and through their interconnections with still other pipeline systems effectively provide access to essentially all of the production areas in the lower-forty-eight states. Thus, assessing where the gas processed by the project will originate, much less where the wells, gathering line locations and the potential associated environmental impacts will occur, would require significant speculation. Accordingly, the level of analysis commenters seek would require the Commission to engage in speculative analysis that would not provide meaningful information to inform our decision here.

Id.

[80] *See* Section 13.1.4.4 and Appendix 13. A.5 on pp. 24 and 101, respectively.

> the commodity itself. Applications for authorization to import or export natural gas must be submitted to DOE.[81]

As recognized by the Commission, the Department of Energy, Office of Fossil Energy ("DOE") holds the authority to authorize imports or exports from a LNG terminal. Indeed, DOE requires importers and exporters to file their own application for such authority and the authorized exporter is required, among other conditions of the approval, to provide DOE (1) a copy of any long-term contracts that result in the export of LNG and (2) monthly reports detailing each LNG cargo exported, including the country of destination.[82] Moreover, waterborne vessels that transport LNG in U.S. waters will be subject to the U.S. Coast Guard's requirements and restrictions. Additional review of the shipping information is not consistent with the regulatory parameters set by the Commission and suggests a nexus to the Commission's siting authority that does not seem to exist. INGAA requests that FERC staff remove the requirement of identifying shipping routes and product destinations for LNG as not being within the Commission's jurisdiction for evaluation.

Q. Preparation of Other Natural Gas Act and Natural Gas Policy Act Filings

As it pertains to both Annual Reports and Advance Notifications under the section 2.55 regulations, the Draft Guidance Manual adds a recommendation to provide two new pieces of information in submittals to the FERC:

- A brief description of impacts including acreage affected and impacts on any sensitive environmental resources; and

[81] *Trunkline Gas Company, LLC*, Order Granting section 3 and section 7 Authorizations and Approving Abandonment, 153 FERC ¶ 61,300 (2015) ¶ 33 (emphasis added) (citations omitted). *See also Shell U.S. Gas & Power, LLC*, Order on Petition for Declaratory Order, 148 FERC ¶ 61,163 (2014) ¶ 8.

[82] *See, e.g.*, Order Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Cove Point LNG Terminal to Free Trade Agreement Nations, DOE/FE Order No. 3019 (2011), Order ¶¶ E, J and Final Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Cove Point LNG Terminal in Calvert County, Maryland, to Non-Free Trade Agreement Nations, DOE/FE Order No. 3331-A (2015), Order ¶¶ I, Q (pp. 109, 112).

- Photographic documentation of the restored work areas (annual report only).[83]

Neither of these items currently are required in the applicable section 2.55 regulations. Additionally, there would be a significant and tangible cost and effort associated with including such items in a pipeline's annual report and/or advance notification submittals. For these reasons, INGAA requests that the Final Guidance remove these recommended information items and revert to the language in the 2002 version of the Guidance Manual, which is more consistent with current, applicable FERC regulations.

III. CONCLUSION

WHEREFORE, INGAA respectfully requests that FERC staff revise and finalize its Guidance Manual for environmental report preparation, consistent with the comments and concerns identified above.

Respectfully submitted,

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[83] pp. 7-12 - 7-13.

APPENDIX

1. National Ambient Air Quality Standards

The foundation of the CAA is the National Ambient Air Quality Standards (NAAQS) program. Congress directed EPA first to identify specific pollutants meriting regulation, and then to determine "safe" levels of those pollutants – that is, the allowable level of ambient concentration that will protect "public health" and "welfare," with an "adequate margin of safety."

Before establishing a NAAQS, EPA must conduct a detailed, thorough, and highly public evaluation of the health and environmental impacts associated with various ambient levels of the pollutant in question. Accordingly, compliance with the NAAQS within a particular area by definition ensures that the project will not cause adverse impacts associated with that particular pollutant and produces an appropriate analysis of air quality impacts for FERC to use for its analysis of that issue in the NEPA document.

Here, FERC staff would be incorporating EPA's NAAQS analysis directly into the NEPA document and using it to evaluate potential impacts to air quality.

2. State Implementation Plans

A typical state implementation plan (SIP) will establish specific emission limits for different types of operations or equipment; require facilities to follow operating and maintenance practices to minimize emissions SIPs must also include provisions allowing the state to monitor and enforce these requirements to ensure compliance with the SIP and attainment of the NAAQS.

The NAAQS program entails a two-phased impacts review. The first phase – the establishment of the NAAQS – identifies the appropriate ambient level of individual pollutants to ensure that air emissions do not create a significant impact to health or welfare – which includes the "human environment" with which NEPA is concerned. The second phase –SIP development, EPA approval, and compliance monitoring/enforcement – ensures that the emissions of these pollutants within each Air Quality Control Region (AQCR) will comply with the NAAQS. Compliance with the state SIP, then, ensures that emissions will not create a significant impact within the AQCR. Accordingly, ensuring that a project will comply with existing EPA-approved SIP requirements would provide the requisite "hard look" at potential air quality impacts that NEPA requires.

3. New Source Review

EPA's New Source Review (NSR) program provides yet another layer of protection and federal review prior to the construction of certain large sources, or significant expansions to existing large sources, to ensure that these projects do not result in significant impacts to air quality and mitigate those impacts by installing control technology. NSR extends the cautious federalism set forth in the NAAQS and SIP programs discussed above: while Congress entrusted the states with regulation of smaller emissions sources, it concluded that larger emissions sources merited direct federal oversight given their more significant environmental impacts and the need for consistent national permitting standards for such sources. The NSR program provides two additional layers of environmental protection: (i) it considers and addresses potential impacts on attainment, both from the current project and from cumulative impacts within an AQCR; and (ii) it imposes even more protective measures in areas that are not currently attaining the NAAQS.

The NSR program is made up of two components: Prevention of Significant Deterioration (PSD) for areas that are in attainment with the NAAQS for the pollutant in question; and Nonattainment New Source Review (NNSR) for areas that are not attaining the NAAQS for a given pollutant.

The PSD program requires sources to conduct air quality modeling to confirm that they will not contribute to an exceedance of the NAAQS and effectively limits the cumulative impacts of *all* growth within each airshed to the level that Congress and EPA concluded would be sufficiently protective of public health and the environment. Projects that trigger PSD must install the "best available control technology" (BACT). For NEPA purposes, this functions as a "cap" on air quality impacts that is designed to prevent cumulative impacts of multiple projects from degrading air quality below the level that EPA has already determined to be appropriately protective of health and the environment (attainment of the NAAQS).

In areas that are not attaining the NAAQS (the ambient levels that EPA has determined are safe for health and the environment)(nonattainment areas), *no* additional "increment" of pollution is allowed. Instead, the NSR program requires new sources constructed in an area to offset any emissions increases with the same amount of emissions decreases from other sources within the same AQCR, so that the project will assist the area in making "reasonable further progress" toward attainment of the NAAQS. 42 U.S.C. § 7503(a)(1)(A). This requirement by itself ensures that additional facilities will not result in significant, negative cumulative impacts because each new facility is required to actually reduce emissions in the air shed as a condition of obtaining the required permits. Projects that trigger NNSR must achieve the Lowest Achievable Emissions Rate" (LAER) irrespective of the cost of control and thus the PSD program ensures the air quality is improved despite the economic growth.

This approach sets forth a reasonable framework around which FERC staff can structure its own reviews, so that it may tailor the scope of its NEPA review to the significance of the potential impact. First, it should collect the available information and analyses that have already been prepared for the project in question under existing state and federal law. For those projects that Congress has declared to be significant – those that trigger major NSR – FERC should then review and evaluate the impacts analyses that were prepared to support the permit application and technology that will be required under the permit. This documentation will provide a reasonable basis for FERC to confirm that the project will not cause significant air impacts.

For projects that do not raise to this level of significance – those that are below the thresholds established by Congress – the same level of scrutiny and detail is not required. For these smaller projects, FERC can appropriately look to the state SIP, including its minor source permitting program, to confirm that the state has required the source to comply with all applicable requirements, and that any controls and monitoring requirements established by these EPA-approved rules will be installed as required.

4. New Source Performance Standards

The New Source Performance Standards ("NSPS") program is a federal program that resulted from Congress' belief that significant emitters, like power plants and refineries, should be required to install the most up-to-date technology when they are constructed, expanded, or rebuilt. *See* 42 U.S.C. § 7411(a)(1). Under the NSPS program, Congress directed EPA first to list categories of sources of pollution that should be subject to regulation, based on their potential to "endanger public health or welfare" (which, again, includes the "human environment" with which NEPA is concerned). 42 U.S.C. § 7411(b)(1)(A). Once EPA identifies the categories of equipment subject to these standards, the Agency must then identify the "best system of emission

reduction" that is available to control emissions from each specific category. 42 U.S.C. § 7411(a)(1). As with the NAAQS and SIP development process, this analysis mirrors the impacts review required under NEPA. Once it adopts an NSPS, EPA must then review those standards at least every eight years and revise them as appropriate. *See* 42 U.S.C. § 7411(b).

The types of equipment involved in the projects that would be subject to the Final Guidance Manual – *e.g.*, compressor engines and turbines – are specifically listed categories of equipment under NSPS. This means that EPA has already (i) fully evaluated the environmental impacts from these kinds of units, (ii) identified the best type and level of mitigation (*i.e.*, emissions controls) that is technologically available and cost-effective for these engines and turbines, and (iii) required any new units an operator installs as part of its proposed projects to implement these mitigating measures as a precondition of installing any new units.

These reviews provide additional support for FERC's NEPA study. Accordingly, it would be appropriate for FERC to incorporate any relevant NSPS analyses already performed by EPA into its NEPA documents.

5. National Emission Standards for Hazardous Air Pollutants

The National Emission Standards for Hazardous Air Pollutants (NESHAP) program is similar to the NSPS program, except it regulates Hazardous Air Pollutants (HAPs), not criteria pollutants like NO_x and ozone. Accordingly, it would again be appropriate for FERC to incorporate any NESHAP analysis into its environmental review, both to address any HAP emissions, and to evaluate the impact that any controls required by the NESHAP may have on emissions of criteria pollutants.