

CQ544



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Subject: NEPA TASK FORCEHydro-Gas CEQ.wpd

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Dear Rhey- Hope this helps. Rich

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FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

OFFICE OF ENERGY PROJECTS

September 23, 2002

Rhey Solomon, Assistant Task Force Leader
National Environmental Policy Act Task Force
Council on Environmental Quality
1724 F Street, NW
Washington, DC 20251

Re: NEPA Task Force, Notice and Request for Comments, July 2, 2002

Dear Mr. Solomon:

This is in response to your July 2, 2002 request for information on how to improve and modernize NEPA analyses and documentation and to foster improved coordination among all levels of government and the public. The Federal Energy Regulatory Commission's (Commission) comments are focused on better stakeholder involvement in the pre-filing NEPA environmental review process for interstate natural gas pipeline projects, and concurrent pre-filing application development and NEPA analysis for licensing jurisdictional hydropower projects. We are seeking to improve interagency and intergovernmental collaboration as well as integrating the needs of other stakeholders regarding natural gas and hydropower projects at the pre-filing stages.

Interstate Natural Gas Pipeline Projects

The Commission, in its effort to improve the way the public and other stakeholders are informed as a project develops, encourages applicants to work with stakeholders before the filing of applications so that the applications can be processed more efficiently by having significant environmental issues resolved in advance. This pre-filing effort gives the Commission staff and other stakeholders a more complete understanding of the issues earlier in the review process. The use of the process is voluntary on the part of natural gas pipeline companies, and must be approved by the Commission staff. In order to receive approval, the applicant must commit to resolve issues as they are identified and to develop a plan which identifies specific tools and actions to facilitate stakeholder communications and public information, including establishing a single point of contact.

In keeping with this goal, the Commission's Office of Energy Projects (OEP) has hosted a series of public outreach meetings around the country for the purpose of exploring and enhancing strategies for constructive public participation in these early

pre-filing stages of natural gas facility planning. One outcome of the meetings was our report entitled "Ideas for Better Stakeholder Involvement in the Interstate Natural Gas Pipeline Planning Pre-filing Process (December 2001)." The report provides information to the industry, agencies, and citizens on the value of public involvement and suggests methods to enhance participation.

In addition, the report included activities that the Commission staff could undertake to further its participation in pipeline project development and issue resolution. In particular, our report suggested that by beginning the NEPA review for pipeline projects before the filing of the application at the Commission, environmental issues could be identified and resolved efficiently as the project develops. This NEPA pre-filing environmental review process offers a number of potentially significant benefits to companies choosing to implement it. Among other things, these activities, when started early, enhance the NEPA process by facilitating issue identification, study needs, and issue resolution. For companies that provide a detailed route and the related resource reports substantially before the filing of the application, a draft environmental impact statement may be released within 2 to 3 months after a complete application is filed, with a final environmental impact statement issued possibly 6 months earlier than average for a major project. Therefore, a final certificate could be issued 7 to 9 months earlier than possible for the traditional certificate application process.

Jurisdictional Hydropower Projects

Commission Order No. 596, issued in October of 1997, codified in our regulations, a collaborative, alternative pre-filing consultation process for licensing hydropower projects. Under this process, an applicant for a hydropower license can prepare a license application that contains a preliminary draft NEPA document.

Hydropower licensing proceedings currently fall into two basic processes: the more structured Traditional Licensing Process (TLP), and the lightly structured Alternative Licensing Process (ALP). Like the interstate natural gas pipeline pre-filing process, a hydropower applicant must also get Commission staff approval to use the ALP, but no approval or consultation with Commission is required before using the TLP. The licensee has discretion in selecting which licensing approach to request, but Commission staff encourages applicants to use the ALP.

In the ALP, Commission compliance with NEPA begins before an applicant files its application and before comments, recommendations, prescriptions, and terms and conditions are filed with Commission for consideration. Commission regulations on the ALP encourage collaboration among a broad spectrum of stakeholders, including

Commission staff, state and federal resource agencies and affected tribes, local governments, businesses and homeowners, conservation and other recreation organizations, and the general public. Consequently, collaboration results in an applicant and stakeholders identifying studies they collectively believe need to be conducted to form an evidentiary record in support of the application, including environmental and power-related proposals for a new license. The alternative licensing regulations also require the hydropower applicant to prepare a preliminary draft NEPA document for filing along with the application. A primary goal of an ALP is to develop consensus among this broad spectrum of stakeholders. That consensus then forms the basis for identifying studies stakeholders believe need to be conducted to form an evidentiary record in support of the environmental and power-related proposals for a new license application.

When the application and preliminary draft NEPA document are collaboratively developed, there is usually general agreement (often in the form of a settlement) among stakeholders as to license terms and conditions, including those which would otherwise be mandatory conditions. While a resource agencies' mandatory conditioning authority could be used as a trump card to try to dictate at least part of the outcome of an ALP, the vast majority of ALPs have not had this as an issue. Furthermore, negotiations continue towards a satisfactory conclusion in the few instances where this potential exists. An ALP has less structure and may be best suited when all stakeholders share an expectation that collaboration on solutions will produce a workable result.

In an ALP, the NEPA process starts early in the application preparation process. Scoping, for example, could be done before any scientific studies are started. In the traditional process, the NEPA process does not start until after an application is filed and accepted. This early start in the NEPA process speeds up the licensing process considerably, resulting in a preliminary draft NEPA document instead of the Exhibit E (environmental exhibit) required in a TLP. The collaborative team involved in the ALP determines, to a great extent, the design and content of the draft NEPA document, and Commission staff are involved in advising the collaborative team throughout the ALP pre-filing activities. In the traditional process, staff does not become involved in the process until after an application is filed.

Conclusion

While the NEPA pre-filing environmental review process for interstate natural gas pipeline projects has only been in use since 2001, the two major cases where it has been used has demonstrated that there are benefits to the process, and we expect use of this

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process in only increase. The ALP for licensing jurisdictional hydropower projects has been used extensively since 1997, and has also been proven as a beneficial process.

We believe that these initiatives have and will continue to focus our NEPA processes on the truly significant issues and provide additional opportunity for issue resolution and meaningful public involvement.

Please let me know if you need copies of the documents identified above, or any other additional information.

Sincerely,

Original Signed 9/23/02

Richard R. Hoffmann, Director
Division of Environmental and Engineering
Review
Office of Energy Projects