

Federal Process for Siting Natural Gas Infrastructure



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Statutory Authorities



Primary Statutory Authorities:

- The Natural Gas Act
- The National Environmental Policy Act

Other Authorities:

- The Coastal Zone Management Act
- The Endangered Species Act
- The National Historic Preservation Act

Natural Gas Act



- The Natural Gas Act is the law that sets out FERC's areas of responsibilities:
 - Section 1 – Identifies projects exempt from FERC jurisdiction
 - Section 3 – Allows FERC to authorize import / export projects
 - Section 7 – Allows FERC to authorize interstate pipeline projects (including storage) and grant eminent domain

Projects Exempt from FERC Jurisdiction



- Local Distribution Company facilities (e.g., UGI, Baltimore Gas and Electric, Washington Gas Light, etc.)
- Intrastate pipelines (where gas is produced, transported and consumed within a single state)
- Hinshaw pipelines (gas is received at the state border and is transported and consumed within that state)
- Gathering facilities (even those crossing state lines)

Natural Gas Act



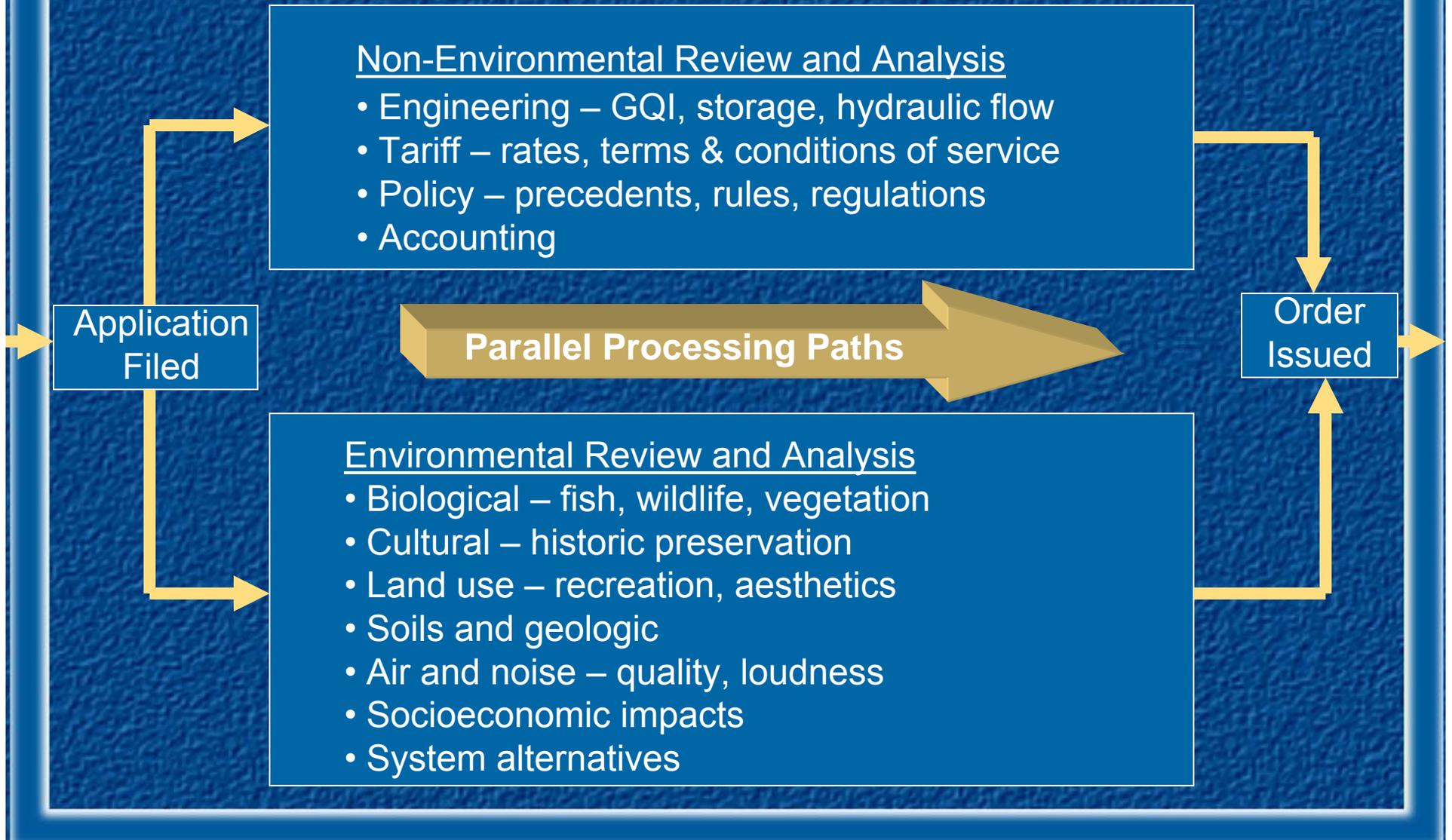
- Case Specific Section 7(c) Certificate
 - Conduct a full review of proposal including engineering, rate, accounting, and market analysis
 - Conduct an environmental review by preparing an Environmental Assessment or an Environmental Impact Statement

FERC's Internal Review Process



- Initial review for completeness (10 business days)
- Issue notice of application
- Assign review team
 - Environmental
 - Certificates
 - Rates
 - Attorney
 - Engineering

Certificate Process Overview



Final Steps of the FERC Process



All aspects of the review (environmental and non-environmental) are brought together into a draft Commission Order which incorporates the results of such review and contains staff-recommended, project-specific requirements, including the time by which the project must be made available to commence service...typically 1 to 2 years for pipelines, longer for storage projects (~3 years) and LNG terminals (~5 years).

Final Steps of the FERC Process



The draft Commission Order is sent to the Chairman and Commissioners for their consideration. They can reject staff's recommendation, accept it, and/or modify it.

If approved, the project proponent is issued a certificate of public convenience and necessity pursuant to 7(c) of the NGA, and with the right to eminent domain pursuant to section 7(h) of the NGA. Authority issued to import / export projects under Section 3 of the NGA does NOT provide for eminent domain.

Final Steps of the FERC Process



The certificate is valid, and all of the conditions remain in full effect, for the life of the project (i.e., the certificate never expires), unless and until the certificate holder seeks, and is authorized by the Commission, to abandon such certificate authority under section 7(b) of the NGA.

Is the FERC Final Decision Really Final?



Parties to the proceeding (i.e., those who have filed a motion to intervene, not those simply filing comments on the proposal) may seek rehearing of the FERC decision. The Commission may grant in full, grant in part, deny in part or deny in full any rehearing requests.

Appellate Review



If not satisfied with FERC's Order on Rehearing, parties may seek judicial review at the Court of Appeals.

If not satisfied with the Appellate Decision, parties may seek judicial review at the Supreme Court – this is a very rare occurrence.

State and Local Permits



- Any state or local permits issued with respect to FERC jurisdictional facilities must be consistent with the conditions of any FERC certificate. FERC encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.

Certificate Process Questions



or anything else you're dying to ask)



Appendix



The Environmental Review Process



NEPA Overview



Is the project categorically excluded?

- Projects with little or no impact (e.g., sale of pipe or abandonment in place)

Environmental Assessment or Environmental Impact Statement

- Level of environmental impacts
 - ◆ significant (EIS) or less than significant (EA)
- Applicant-proposed mitigation
- Anticipated public controversy

Phases of Project Review



Project Preparation

- The applicant working on its own

Pre-Filing

- FERC staff working with the applicant and stakeholders before the filing of an application

Application Review

- FERC staff working with the applicant and stakeholders after the filing of an application

Post-Authorization

- FERC staff working with the applicant and stakeholders to ensure compliance with conditions to the FERC approval



The Pre-Filing Process

- Voluntary for pipelines, required for LNG facilities
- Used for projects requiring an EIS, or an EA where controversy is likely
- Normally requires the applicant to hire and fund a contractor to prepare EA/EIS
 - Staff selects contractor from list of three provided by the applicant
 - Contractor works solely under Staff's direction

Pre-Filing Requirements



- Project sponsor selects pipeline routes and begins surveys and studies
- Meet with staff regarding proposed project
- Submit draft RFP for 3rd-party contract and draft PF request for staff review
- File PF request
- Complete at least 6 months of PF review

Goals of the Pre-Filing Process



- Early identification and resolution of environmental issues
- More direct interaction between FERC staff and stakeholders
- Interactive, concurrent NEPA/permitting process, no shortcuts
- FERC staff are advocates of the Process, not the Project!
- Goal of “no surprises” when application is filed

FERC Staff Pre-Filing Activities



- Identify affected parties:
 - landowners
 - agencies
 - other stakeholders
- Facilitate identification of issues
- Identify study needs
- Facilitate resolution of issues
- Issue scoping notice
- Examine alternatives
- Arrange and attend site visits and meetings
- Initiate preparation of preliminary NEPA document
- Review draft resource reports

Public Involvement During Pre-Filing Review



The FERC Process

- Project sponsor holds Open Houses; FERC staff participates
- Issue Notice of Intent to Prepare the NEPA Document (i.e., scoping)
- Hold scoping meetings

Public Input

- Contact the project sponsor w/questions, concerns; contact FERC
- Send letters expressing concerns about environmental impact
- Attend scoping meetings

The Environmental Report (13 Resource Reports)



1. General Project Description
2. Water Use & Quality
3. Fish, Wildlife & Vegetation
4. Cultural Resources
5. Socioeconomics
6. Geological Resources
7. Soils
8. Land Use, Recreation, & Aesthetics
9. Air & Noise Quality
10. Alternatives
11. Reliability & Safety
12. PCB Contamination (for pipelines only)
13. LNG Engineering & Design Details

Public Involvement During Application Review



The FERC Process

- Issue Notice of the Application
- Issue Notice of Availability of the DEIS
- Hold Public Meetings on DEIS
- Issue a Commission Order

Public Input

- File an Intervention; register for e-subscription
- File comments on the adequacy of DEIS
- Attend public meetings to give comments on DEIS
- Interveners can file a request for rehearing of the Commission Order

Timelines: Traditional vs. Pre-Filing Process

