

The following regulatory and statutory language relate to FERC-606 and FERC-607.

## **PART 385—RULES OF PRACTICE AND PROCEDURE**

### **§ 385.2013 Notification of requests for Federal authorizations and requests for further information (Rule 2013).**

(a) For each Federal authorization— *i.e.* , permit, special use authorization, certification, concurrence, opinion, or other approval—required under Federal law with respect to a natural gas project for which an application has been filed under section 3 of the Natural Gas Act for a certificate of public convenience and necessity under section 7 of the Natural Gas Act, each Federal agency or officer, or State agency or officer acting pursuant to delegated Federal authority, responsible for a Federal authorization must file with the Commission within 30 days of the date of receipt of a request for a Federal authorization, notice of the following:

- (1) Whether the application is ready for processing, and if not, what additional information or materials will be necessary to assess the merits of the request;
- (2) The time the agency or official will allot the applicant to provide the necessary additional information or materials;
- (3) What, if any, studies will be necessary in order to evaluate the request;
- (4) The anticipated effective date of the agency's or official's decision; and
- (5) If applicable, the schedule set by Federal law for the agency or official to act.

(b) A Federal agency or officer, or State agency or officer acting pursuant to delegated Federal authority, considering a request for a Federal authorization that submits a data request to an applicant must file a copy of the data request with the Commission within 10 business days.

[Order 687, 71 FR 62921, Oct. 27, 2006]

### **§ 385.2014 Petitions for appeal or review of Federal authorizations (Rule 2014).**

(a) For each Federal authorization— *i.e.* , permit, special use authorization, certification, concurrence, opinion, or other approval—required under Federal law with respect to a natural gas project for which an application has been filed for authorization under section 3 of the Natural Gas Act for a certificate of public convenience and necessity under section 7 of the Natural Gas Act, the Federal agency or officer, or State agency or officer acting pursuant to delegated Federal authority, responsible for each Federal authorization must file with the Commission within 30 days of the effective date of a final decision or action on a request for a Federal authorization or the expiration of the time provided by the Commission or by Federal law for a final decision or action, the following:

- (1) A copy of any final decision or action;

(2) An index identifying all documents and materials—including pleadings, comments, evidence, exhibits, testimony, project alternatives, studies, and maps—relied upon by the agency or official in reaching a decision or action; and

(3) The designation “Consolidated Record” and the docket number for the Commission proceeding applicable to the requested Federal authorization.

(b) The agencies' and officers' decisions, actions, and indices, and the Commission's record in each proceeding, constitute the complete consolidated record. The original documents and materials that make up the complete consolidated record must be retained by agencies, officers, and the Commission for at least three years from the effective date of a decision or action or until an appeal or review is concluded.

(c) Upon appeal or review of a Federal authorization, agencies, officers, and the Commission will transmit to the reviewing authority, as requested, documents and materials that constitute the complete consolidated record.

[Order 687, 71 FR 62921, Oct. 27, 2006]

**ENERGY POLICY ACT OF 2005****SEC. 313. PROCESS COORDINATION; HEARINGS; RULES OF PROCEDURE.**

(a) IN GENERAL.—Section 15 of the Natural Gas Act (15 U.S.C. 717n) is amended—

(1) by striking the section heading and inserting “PROCESS COORDINATION; HEARINGS; RULES OF PROCEDURE”;

(2) by redesignating subsections (a) and (b) as subsections (e) and (f), respectively; and

(3) by striking “SEC. 15.” and inserting the following:

“SEC. 15.(a) In this section, the term ‘Federal authorization’—  
“(1) means any authorization required under Federal law with respect to an application for authorization under section Notification.

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3 or a certificate of public convenience and necessity under section 7; and  
“(2) includes any permits, special use authorizations, certifications, opinions, or other approvals as may be required under Federal law with respect to an application for authorization under section 3 or a certificate of public convenience and necessity under section 7.

“(b) DESIGNATION AS LEAD AGENCY.—

“(1) IN GENERAL.—The Commission shall act as the lead agency for the purposes of coordinating all applicable Federal authorizations and for the purposes of complying with the

National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

“(2) OTHER AGENCIES.—Each Federal and State agency considering an aspect of an application for Federal authorization shall cooperate with the Commission and comply with the deadlines established by the Commission.

“(c) SCHEDULE.—

“(1) COMMISSION AUTHORITY TO SET SCHEDULE.—The Commission shall establish a schedule for all Federal authorizations. In establishing the schedule, the Commission shall—

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

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

“(2) FAILURE TO MEET SCHEDULE.—If a Federal or State administrative agency does not complete a proceeding for an approval that is required for a Federal authorization in accordance with the schedule established by the Commission, the applicant may pursue remedies under section 19(d).

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

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

“(2) judicial review under section 19(d) of decisions made or actions taken of Federal and State administrative agencies and officials, provided that, if the Court determines that the record does not contain sufficient information, the Court may remand the proceeding to the Commission for further development of the consolidated record.”.

(b) JUDICIAL REVIEW.—Section 19 of the Natural Gas Act (15 U.S.C. 717r) is amended by adding at the end the following:

“(d) JUDICIAL REVIEW.—

“(1) IN GENERAL.—The United States Court of Appeals for the circuit in which a facility subject to section 3 or section 7 is proposed to be constructed, expanded, or operated shall have original and exclusive jurisdiction over any civil action for the review of an order or action of a Federal agency (other than the Commission) or State administrative agency acting pursuant to Federal law to issue, condition, or deny any permit,

119 STAT. 690 PUBLIC LAW 109-58—AUG. 8, 2005 license, concurrence, or approval (hereinafter collectively referred to as ‘permit’) required under Federal law, other than the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.).

“(2) AGENCY DELAY.—The United States Court of Appeals for the District of Columbia shall have original and exclusive jurisdiction over any civil action for the review of an alleged failure to act by a Federal agency (other than the Commission) or State administrative agency acting pursuant to Federal law to issue, condition, or deny any permit required under Federal law, other than the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.), for a

facility subject to section 3 or section 7. The failure of an agency to take action on a permit required under Federal law, other than the Coastal Zone Management Act of 1972, in accordance with the Commission schedule established pursuant to section 15(c) shall be considered inconsistent with Federal law for the purposes of paragraph (3).

“(3) COURT ACTION.—If the Court finds that such order or action is inconsistent with the Federal law governing such permit and would prevent the construction, expansion, or operation of the facility subject to section 3 or section 7, the Court shall remand the proceeding to the agency to take appropriate action consistent with the order of the Court. If the Court remands the order or action to the Federal or State agency, the Court shall set a reasonable schedule and deadline for the agency to act on remand.

“(4) COMMISSION ACTION.—For any action described in this subsection, the Commission shall file with the Court the consolidated record of such order or action to which the appeal hereunder relates.

“(5) EXPEDITED REVIEW.—The Court shall set any action brought under this subsection for expedited consideration.”.