

Supporting Statement for
**FERC-537, Gas Pipeline Certificates: Construction, Acquisition and Abandonment;
FERC-539, Gas Pipeline Certificates: Import/Export Related;
FERC-606, Notification of Request for Federal Authorization and Requests for Further
Information; and
FERC-607, Report on Decision or Action on Request for Federal Authorization.**

**With regard to Regulations Implementing the Energy Policy Act of 2005;
Coordinating the Processing of Federal Authorizations for Applications under Sections 3
and 7 of the Natural Gas Act and Maintaining a Complete Consolidated Record**

As proposed in Docket No. RM06-1-000
(Final Rule Issued October 19, 2006)

The Federal Energy Regulatory Commission (FERC/Commission) requests Office of Management and Budget (OMB) review and approval of **FERC-537, FERC-539, FERC-606, and FERC-607**. **FERC-537** and **FERC-539** are existing data requirements that amend Parts 153 and 157 of the Commission's regulations. **FERC-606 and FERC-607** are new information collection requirements that amend Part 385 of the Commission's regulations.

Section 313 of the Energy Policy Act of 2005 (EPAct 2005)¹ amends section 15 of the Natural Gas Act (NGA)² to provide the Federal Energy Regulatory Commission (Commission) with additional authority to (1) coordinate the processing of authorizations required under federal law for proposed natural gas projects subject to NGA sections 3 and 7 and (2) maintain a complete consolidated record of decisions with respect to such federal authorizations.

We estimate that the annual reporting-burden related to the subject Final Rule will be 408 hours under FERC-537, 6 hours under FERC-539, 7,489 hours under FERC-606 and 10,423 hours under FERC-607 for a total of 18,326 hours. These estimates are unchanged from what the Commission proposed in the NOPR.

Background

The Commission authorizes the construction and operation of proposed natural gas projects under NGA sections 3 and 7.³ However, the Commission does not have jurisdiction over every aspect of each natural gas project. Hence, for a natural gas project to go forward, in addition to Commission approval, several different agencies must typically reach favorable findings regarding other aspects of the project.

¹ Pub. L. No. 109-58, 119 Stat. 594 (2005).

² 15 U.S.C. § 717n (2000).

³ Under NGA section 7, the Commission has jurisdiction over the transportation or sale of natural gas in interstate commerce and the construction, acquisition, operation, and abandonment of facilities to transport natural gas in interstate commerce. Pursuant to Department of Energy (DOE) Delegation Order No. 00-004.00, 67 Fed. Reg. 8946 (February 27, 2002), the Secretary of Energy delegated to the Commission the authority under NGA section 3 to approve or disapprove applications for the construction and operation of facilities to import or export natural gas, including liquefied natural gas.

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To better coordinate the activities of the separate agencies with varying responsibilities over proposed natural gas projects, EPAct 2005 modifies FERC's role. Section 313 of EPAct 2005 directs FERC (1) to establish a schedule for agencies to review requests for federal authorizations required for a project and (2) to compile a record of each agency's decision, together with the record of the Commission's decision, to serve as a consolidated record for the purpose of appeal or review, including judicial review.

Subject NOPR (Docket No. RM06-1-000)

On May 18, 2006 the Commission issued RM06-1-000 Notice of Proposed Rulemaking (NOPR) which sought comments on procedures to better coordinate the actions of the Commission and other agencies in responding to requests for federal authorizations necessary for natural gas projects and on procedures by which the Commission proposes to maintain a complete consolidated record documenting agencies' responses to requests for federal authorizations.⁴

As modified by section 313(a) of EPAct 2005, NGA section 15(b)(1) designates FERC 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" (NEPA).⁵ The new NGA section 15(c)(1) directs FERC to establish a schedule for issuance of all federal authorizations required for NGA section 3 and 7 natural gas project proposals. In setting a schedule, the Commission is directed both to "ensure expeditious completion" of NGA section 3 and 7 proceedings⁶ and to "comply with applicable schedules established by Federal law."⁷

The proposed rulemaking (NOPR) was drafted to expedite the assessment of NGA section 3 and 7 applications by better coordinating the review undertaken by the various agencies responsible for issuing necessary federal authorizations.⁸ To the extent that the

⁴ EPAct 2005 section 313 describes federal authorizations necessary for an NGA section 3 or 7 project as "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" granting, denying, or conditioning requests for "permits, special use authorizations, certifications, opinions, or other approvals." The proposed regulations reflect this description. However, the NOPR generally condenses this description to "authorizations by agencies."

⁵ 42 U.S.C. 4321 *et seq.* (2000). Commission authorization under NGA section 3 or 7 often triggers NEPA, which aspires to "utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision-making which may have an impact on man's environment." 42 U.S.C. § 4332(2)(A) (2000). EPAct 2005 clarifies that the Commission will lead the collective, multi-agency NEPA compliance effort for natural gas projects subject to NGA section 3 or 7.

⁶ NGA section 15(c)(1)(A).

⁷ NGA section 15(c)(1)(B).

⁸ In general, any proposal that will require Commission authorization under NGA section 3 or 7 will also require compliance with other federal requirements. Typically, these additional federal authorizations are considered in the context of the Commission's NEPA review. Federal authorizations for a natural gas project may require compliance with the Clean

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Commission and the other agencies conduct their information collection and analysis concurrently – i.e., in tandem rather than sequentially – applications can be processed more efficiently. To this end, the Commission aimed to have all agencies responsible for issuing federal authorizations necessary for natural gas projects initiate consideration of a requested authorization as early as practicable and reach timely final decisions.

The Commission aimed to facilitate agencies' concurrent assessments of proposed natural gas projects by specifying that an NGA section 3 or 7 application submitted to the Commission will not be deemed ready for processing unless the project sponsor has submitted a request to each agency responsible for issuing a federal authorization required for the proposal. A project sponsor might fulfill this obligation by submitting requests for federal authorizations on the same day that an NGA section 3 or 7 application is submitted to the Commission. But this need not be the case. In practice, if a project sponsor anticipates that another agency's consideration of a request for a necessary federal authorization could extend beyond the time it will take the Commission to act, then the applicant may find it advantageous to submit a request to that agency in advance of filing an application with the Commission; otherwise, authorization to proceed on a project could be delayed pending a decision by the other agency. If, after filing its application with the Commission, an applicant makes material modifications to any request for a federal authorization from another agency, the applicant is to file an update with the Commission, describing its revised request.

To assist FERC in its role as lead agency, the Commission proposed in the NOPR that each agency notify it when the agency receives a request for a federal authorization describe its anticipated processing procedure and provide FERC with a copy of any data requests sent to the applicant. When the Commission receives an NGA section 3 or 7 application, it will consider the information that the agencies submit in establishing a schedule for agency decisions on requests for authorizations necessary for a proposed natural gas project. If the Commission elects not to issue a notice specifying a schedule for a particular project proposal, then a default deadline of

Water Act, 33 U.S.C. 1251 *et seq.* (2000), and the National Pollution Discharge Elimination System Program, 40 CFR Part 122 *et seq.* (2005); the Clean Air Act, 42 U.S.C. 1801 *et seq.* (2000), and the air quality regulations and state implementation plans adopted pursuant to 40 CFR Parts 50-99 (2005); the National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.* (2000); the Archeological and Historic Preservation Act of 1974, 16 U.S.C. 469-469c (2000); the Coastal Zone Management Act of 1972, 16 U.S.C. 1451 *et seq.* (2000); the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.* (2000); Executive Order No. 11,988, 42 Fed. Reg. 26,951 (May 24, 1977), requiring federal agencies to evaluate the potential effects of federal actions on a floodplain; Executive Order No. 11,990, 42 Fed. Reg. 26,961 (May 24, 1977), requiring an evaluation of the potential effects of construction on wetlands; the Wild and Scenic Rivers Act, 16 U.S.C. 1274 *et seq.* (2000); the National Wilderness Act, 16 U.S.C. 1133 *et seq.* (2000); the National Parks and Recreation Act of 1978, 16 U.S.C. 1 and 230 *et seq.* (2000); the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* (2000); the Marine Mammal Protection Act of 1972, 16 U.S.C. 1361-1407 (2000); the Migratory Bird Treaty Act of 1918, 16 U.S.C. 703-712 (2000); the Rivers and Harbors Act of 1899, 33 U.S.C. 403 (2000); and Executive Order Nos. 10485, 18 Fed. Reg. 5397 (Sept. 3, 1953), and 12038, 43 Fed. Reg. 4957 (Feb. 7, 1978), which require a Presidential Permit for facilities at the border of the United States used to import or export natural gas.

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90 days after the issuance of the Commission's final environmental document on the proposed project, or if no environmental document is issued, no later than 90 days after issuance of a final order, will apply to agencies without applicable schedules established by federal law.

If an agency finds it necessary to request additional information from an applicant, the Commission is proposing that the agency file a copy of its data request with the Commission. This will enhance the Commission's ability to assess the progress of agency proceedings and inform the Commission of issues raised in those proceedings.

Determining a Schedule for Federal Authorizations

Initially, upon receiving an application, the Commission issues a notice "within 10 days of filing" pursuant to § 157.9 of its regulations.⁹ The Commission proposes to clarify that the time to issue a notice runs for 10 business days.

In issuing a notice of an application, the Commission, or the Director of OEP acting in accordance with delegated authority, may issue a schedule for decisions on outstanding requests for federal authorizations. In the event the Commission or the Director of OEP does not set a schedule for a particular project, the default deadline for decisions by those agencies without applicable schedules established by federal law will be no later than 90 days after the issuance of the Commission's final environmental document on the proposed project, or if no environmental document is issued, no later than 90 days after issuance of a final order. In some cases – for example, when there is a demonstrated need to have a new natural gas project in service by a certain date – the Commission may set deadlines that are shorter than the maximum times permitted under federal law. In such cases, the Commission recognizes that compliance with its specified deadlines would be voluntary for agencies with deadlines determined by federal law.

In setting a schedule, the Commission will take the circumstances of other agencies into consideration. To this end, when an agency receives a request for a federal authorization, proposed new § 385.2013 specifies that within 30 days of receiving the request, the agency shall inform the Commission, by electronic means, of the following: (1) whether the agency deems the application to be 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 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 decision; and (5) if applicable, the schedule set forth by federal law for the agency to act. In order to assess the progress of proceedings on requests for federal authorizations, proposed new § 385.2013 requires that if an agency asks for additional information from an

⁹ Alternatively, the Commission may reject the application in accordance with § 157.8 of its regulations.

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applicant seeking a federal authorization, then, within three days of submitting its request to the applicant, the agency file a copy of its data request with the Commission.

In calculating the time an agency has to act on a request, the Commission will measure time from the day a project sponsor submits a request to an agency. The Commission has previously had cause to consider when a federally specified time period starts to run with respect to a request for a water quality certification under section 401 of the Clean Water Act (CWA),¹⁰ and has concluded that the time allotted by law starts to run on the day the agency receives the project sponsor's request.¹¹

If an agency determines that an authorization request does not contain information adequate to permit it to reach a reasoned decision, the agency may deny the request, in which case Commission authorization could be denied on the grounds that the project sponsor failed to obtain a federal authorization necessary for the proposed natural gas project to go forward. However, rather than risk rejection on the grounds an application is deficient, FERC expects applicants to work with agencies to cure deficiencies so that a request may be assessed on its merits. To this end, if at any time during the review process an agency believes that an applicant is being uncooperative or failing to respond to reasonable requests for additional information, the agency should promptly notify the Commission. The Commission intends to set deadlines to allow time to ensure that federal authorizations are issued, conditioned, or denied based on sufficient information and an agency's sound assessment thereof.

As indicated above, the Commission intends to adopt a default schedule to complete action on requests for federal authorizations necessary for a proposed natural gas project. The default deadline will be 90 days after issuance of the Commission's final environmental document in a given proceeding, or if an environmental document is not issued, then 90 days after issuance of the final Commission order. While it is desirable that all agencies act within

10 33 U.S.C. § 1341 (2000).

11 Section 4.34(b)(5)(iii) of the Commission's regulations states: "A certifying agency is deemed to have waived the certification requirements of section 401(a)(1) of the Clean Water Act if the certifying agency has not denied or granted certification by one year after the date the certifying agency received a written request for certification." In response to concerns that this manner of marking time might trigger the running of the one year time period by filing a deficient request, the Commission observed that if an agency finds a request to be incomplete – a determination the agency can be expected to make within, at most, several weeks of receipt of a request – the agency then has the discretion to deny the request on the grounds that it is incomplete. See *Regulations Governing Submittal of Proposed Hydropower License Conditions and Other Matters*, Order No. 533, FERC Statutes and Regulations ¶ 30,921 at 30,135-38, 56 Fed. Reg. 23,108 (May 20, 1991), 55 FERC ¶ 61,193 (1991). FERC notes, however, that federal regulations allow the United States Corps of Engineers, Department of the Army (Corps of Engineers) to wait to initiate its review of a request until after a project sponsor obtains certain separate federal authorizations, e.g., a CWA section 401 water certification (33 CFR 325.2(b)) or a coastal zone management consistency determination (33 CFR 325.2(2)(ii)). If the Corps of Engineers finds it necessary to forego its review of a request until another agency renders its decision, then the schedule established by federal law for the Corps of Engineers' review does not start to run until that other agency acts.

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the same time frame, the Commission cannot effect any change to a schedule established by federal law.

FERC anticipates this default schedule will prove adequate for most projects. However, the Commission (or the Director of OEP acting under delegated authority) may find that circumstances warrant establishing an individualized schedule for a particular project. For example, when an applicant proposes a project that appears modest, routine, or unremarkable, the Commission may consider establishing an accelerated schedule. It has been FERC's experience that in the vast majority of natural gas cases, agencies act on requests for federal authorizations expeditiously. Thus, the Commission expects that in most cases, agencies will complete action on requests for federal authorizations within the time frame established by the Commission, even if a longer time is allotted to agencies by federal law.

Subject Final Rule (Docket No. RM06-1-000)

On October 19, 2006 in RM06-1-000 the Commission issued a final rule establishing regulations that govern its exercise of Section 313 of the Energy Policy Act of 2005 (EPA 2005) as it amends section 15 of the Natural Gas Act (NGA). Section 313 provides the Commission with additional authority to coordinate the processing of authorizations required under federal law for proposed natural gas projects subject to NGA sections 3 and 7 and to maintain a complete consolidated record of decisions with respect to such federal authorizations. This authority also directs the Commission to establish a schedule for the completion of reviews of requests for authorizations necessary for a proposed project and to compile a consolidated record to be used in the event of review of actions by the Commission and other agencies in responding to requests for authorizations necessary for a proposed project.

A. Justification

1. CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY

FERC-537 (Project Sponsors)

Under the Natural Gas Act (NGA) (Public Law 75-688) (15 U.S.C. 717-717w) a natural gas company must obtain FERC authorization to engage in the transportation of natural gas in interstate commerce, to undertake the construction or extension of any facilities, or to acquire or operate any such facilities or extensions in accordance with Section 7(c) of the NGA. A natural gas company must also obtain FERC approval under Section 7(b) of the NGA prior to abandoning any jurisdictional facility or service. Under the Natural Gas Policy Act (NGPA)

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(Public Law 96-621) interstate and intrastate pipelines must also obtain FERC authorization for certain transportation arrangements.

If a certificate is granted, the natural gas company can engage in the interstate transportation of natural gas and construct, acquire, or operate facilities. Conversely, approval of an abandonment application permits the pipeline to cease service and discontinue the operation of such facilities. Authorization under NGPA Section 311(a) allows the interstate or intrastate pipeline applicants to render certain transportation services.

FERC-539 (Project Sponsors)

Section 3 of the Natural Gas Act (NGA) (Public Law 75-688) (15 U.S.C. 717-717w) provides, in part, that "...no person shall export any natural gas from the United States to a foreign country or import any natural gas from a foreign country without first having secured and order from the Commission authorizing it to do so."

The 1992 amendments to Section 3 of the NGA concern importation or exportation from/to a nation which has a free trade agreement with the United States, and requires that such importation or exportation:

1. Shall be deemed to be a "first sale", i.e., not a sale for a resale, and
2. Shall be deemed to be consistent with the public interest, and applications for such importation or exportation shall be granted without modification or delay.

With the ratification of the North American Free Trade Agreement and the Canadian Free Trade Agreement, the Federal regulatory focus on construction, operation, and siting of import or export facilities has become much greater.

Project sponsors will be required to submit an additional exhibit with each application. However, the information in the new exhibit already should be readily available to the project sponsor; the new reporting requirement merely directs that this information be summarized and presented in tabular form.

FERC-606

FERC-606, "Notification of Request for Federal Authorization and Requests for Further Information" is a new information collection requirement. The new § 385.2013 (FERC-606) requires agencies and officials responsible for issuing, conditioning, or denying requests for federal authorizations necessary for a proposed natural gas project to report to the Commission

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regarding the status of an authorization request. This reporting requirement is intended to allow agencies to assist the Commission to make better informed determinations in establishing due dates for agencies' decisions.

FERC-607

FERC-607, "Report on Decision or Action on Request for Federal Authorization," is also a new information collection requirement which requires agencies or officials to submit to the Commission a copy of a decision or action on a request for federal authorization and an accompanying index to the documents and materials relied on in reaching a conclusion.

Federal and State Agencies and Officials Issuing, Conditioning, or Denying Federal Authorizations

The Commission anticipates that only minor modifications to current practice and procedure will be necessary to satisfy these requirements. The Commission assumes that upon initial receipt of a request for federal authorizations, agencies make an initial assessment to verify whether the request is ready for processing. New § 385.2013 directs the agency or official to forward that initial assessment to the Commission. If in the course of processing a request, an agency or official finds additional information from the applicant is needed, new § 385.2013 directs the agency or official to forward to the Commission a copy of any data request sent to the applicant. With respect to § 385.2014, the Commission assumes that in considering a request for a federal authorization, agencies compile and title the documents and materials they rely upon in reaching a decision. The Commission is not proposing a specific format for an index; thus, an agency's in-house recordkeeping may be presented as an index as long as it functions as a table of contents to the documents and materials.

Note that in estimating the burden to provide the information specified in the proposed new §§ 385.2013 and 385.2014, only state agencies acting pursuant to federally delegated authority under the CWA, CAA, CZMA, and NHPA are included.¹²

As noted above, Section 313 of EPAAct 2005 directs the Commission (1) to establish a schedule for state and federal agencies and officers to act on requests for federal authorizations required for NGA section 3 and 7 gas projects and (2) to maintain a complete consolidated record of all decisions or actions by the Commission and other agencies and officers with respect

¹² See 44 U.S.C. 3502(3)(A) (2000) and 5 CFR 1320.3(c)(4) (2005), stating that "[a]gency requests for State or local governments to provide the agency with information constitute a collection of information requiring OMB approval, as are agency requests for respondents to provide information to State or local governments," and 5 CFR 1320.3(d) (2005), stating that "[c]ollections of information conducted by State or local agencies under contract or in cooperation with a Federal agency are considered to be sponsored by the Federal agency and need to be approved by OMB."

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to federal authorizations. The Commission considers the regulatory revisions herein the minimal necessary to be able to implement this Congressional mandate.

2. HOW, BY WHOM AND FOR WHAT PURPOSE IS THE INFORMATION TO BE USED AND THE CONSEQUENCES OF NOT COLLECTING THE INFORMATION

The natural gas companies file the necessary information with FERC so that the Commission can determine from the data if the requested certificate should be authorized. The data required to be submitted in a normal certificate filing consists of identification of the company and responsible officials, factors considered in the location of the facilities and the impact on the area for environmental considerations. Also to be submitted are the following:

- Flow diagrams showing the design capacity for engineering design verification and safety determination;
- Gas reserve data for appraisal of the feasibility of the project;
- Market data presenting the economic basis for the proposed action; and
- Cost of proposed facilities, plans for financing, and estimated revenues and expenses related to the proposed facility for accounting and financial evaluation.

Because of the greater demand for natural gas as seen in rapidly evolving market conditions, FERC established in FY '99 a performance plan to process cases as efficiently as possible. The Commission grouped certificate applications by the level of effort required to respond to the applications and established clear targets for the time it should take to process each type of application. Among the four types of certificate cases, three met or beat targets, and the fourth approximated the target time.

Environmental concerns play a significant role in the review of certificate construction applications. Pipelines are facing increased opposition from landowners as new projects are proposed in more heavily populated areas. When new pipelines propose to serve markets currently served by existing pipelines, FERC has to balance the benefits of alternative supplies of natural gas with the environmental impact of a new project. Critical to the Commission's efforts to balance benefits and environmental impacts are the environmental conditions the Commission builds into the certificates.

The Commission is modifying §§ 153.8 and 157.14 of its regulations to specify that an applicant submitting an application for a natural gas project under NGA section 3 or 7 must first submit requests for federal authorizations necessary for its proposed project, and include an exhibit as part of its application that itemizes each required federal authorization, the agency

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responsible for issuing each authorization, the date a request for authorization was submitted to each agency, and the date by which the applicant has requested or expects each authorization be issued.¹³ This threshold requirement should enhance the Commission's and agencies' capability to coordinate their consideration of a proposed natural gas project, and thereby avoid what might otherwise be piecemeal and disjointed assessments of jurisdictionally discrete aspects of a single project.

In addition to modifying §§ 153.8 and 157.14 of its regulations, the Commission is amending § 375.308, Delegations to the Director of the Office of Energy Projects, by adding a new § 375.308(bb). This additional delegation of authority will permit the Director of OEP to establish schedules, consistent with federal law, for agencies to complete their necessary analysis and decisionmaking processes and issue decisions on requests for authorizations for natural gas projects.

Finally, the Commission is adding a new § 153.4 to its regulations, to specify that certain Part 157 procedural regulations governing filing an application under NGA section 7 are equally applicable to applications under NGA section 3. Currently, applicants have either submitted NGA section 3 application for liquefied natural gas (LNG) projects in conjunction with NGA section 7 applications for interrelated facilities, or else adapted the Part 157 procedural filing requirements to submissions under NGA section 3.

Consolidated Record

Section 15(d) of the NGA, added by EPAct 2005, states:

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.

¹³ Specifically, for NGA section 3 projects, the Commission proposes to expand the exhibits required under § 153.8 of the regulations by adding a new § 153.8(a)(9), Exhibit H, containing the information described above, and for NGA section 7 projects, the Commission is amending § 157.14 of the regulations by adding an identical requirement in a new § 157.14(a)(12), Exhibit J. An applicant that does not include this proposed new information statement risks rejection of its application as incomplete. In addition, if after filing its application with the Commission, an applicant makes material modifications to any request for a federal authorization from another agency, the applicant should file an update with the Commission, describing its revised request.

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As provided by EAct 2005, this consolidated record will serve as the record for (1) appeals or reviews under the Coastal Zone Management Act (CZMA)¹⁴ and (2) judicial review under NGA section 19(d)¹⁵ of decisions of federal and state administrative agencies and officials.¹⁶

If the collection of data for FERC-537, FERC-539, FERC-606 and FERC-607 in general were not conducted, the Commission would not be able to meet its statutory responsibilities, would not be able to authorize and monitor certain energy projects to ensure that the construction of natural gas pipeline projects and LNG terminals are economically viable and at the same time protect the environment. This becomes even more apparent in trying to implement the provisions of the Energy Policy Act of 2005.

3. DESCRIBE ANY CONSIDERATION OF THE USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN AND THE TECHNICAL OR LEGAL OBSTACLES TO REDUCING BURDEN

There is an ongoing effort to determine the potential and value of improved information technology to reduce burden. Specifically, in order to increase the efficiency with which it carries out its program responsibilities, the Commission has been implementing measures to use information technology to reduce the amount of paperwork required in its proceedings. In Order No. 619, FERC established an electronic filing initiative to meet the goals of the Government Paperwork Elimination Act, which directed agencies to provide for optimal use and acceptance of electronic documents and signatures and electronic recordkeeping, where practical, by October 2003. Among the qualified documents that can now be filed electronically are comments on a filing. "Comments on a Filing" is a document filed in response to a FERC public notice or order in a specific FERC docketed proceeding. It includes comments on applications, comments filed with environmental documents, protests or statements of positions. In addition, in the Commission's regulations at 18 CFR Part 157, section 157.6 directs applicants to file in an electronic format (1) applications covering acquisitions and all attached exhibits; (2) applications to abandon facilities; (3) progress reports; (4) request for authorizations under the notice procedures established in 157.205; (5) applications submitted under subpart F of Part 157 and (6) annual report required by §157.207.

Electronic Submission of Information

¹⁴ 16 U.S.C. 1451 *et seq.* (2000). In an appeal proceeding, the record may be supplemented as provided by CZMA section 319.

¹⁵ 15 U.S.C. § 717r (2000).

¹⁶ If the consolidated record does not contain sufficient information, the United States Court of Appeals may remand the proceeding to the Commission for further development of the record. Section 19(d)(1)(2) of the NGA.

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The Commission proposed in the NOPR than as part of fulfilling its mandate to maintain a complete consolidated record, to require that within three days of the effective date of an agency's final decision on a request for a federal authorization necessary for a proposed natural gas project, that the agency file electronically with the Commission, a copy, or summary, of its decision and an index to documents and materials included in the agency's proceeding.¹⁷ If an agency does not reach a decision by the deadline established by the Commission or federal law, then within three days of the expiration of the time allotted, the agency is to inform the Commission and file an index to the documents and materials in the agency's inconclusive proceeding.

Several agencies in response to the NOPR stated that they are not yet prepared to transmit information by electronic means. Consequently, to avoid any undue hardship, while stressing its preference to receive information via electronic means, the Commission in the Final Rule removes the requirement to submit information by electronic means.

4. DESCRIBE EFFORTS TO IDENTIFY DUPLICATION AND SHOW SPECIFICALLY WHY ANY SIMILAR INFORMATION ALREADY AVAILABLE CANNOT BE USED OR MODIFIED FOR USE FOR THE PURPOSE(S) DESCRIBED IN INSTRUCTION NO. 2.

Commission filings and data requirements are periodically reviewed in conjunction with OMB clearance expiration dates. This includes a review of the Commission's regulations and data requirements to identify any duplication. To date, no duplication of the proposed data requirements has been found. The Commission staff is reviewing its various filings in an effort to alleviate duplication. There are no similar sources of information available that can be used or modified for use for the purpose described in Item A (1.).

5. METHODS USED TO MINIMIZE BURDEN IN COLLECTION OF INFORMATION INVOLVING SMALL ENTITIES

¹⁷ All such submissions are to be in accord with the Commission's regulations, Part 385, subpart T, Formal Requirements for Filings in Proceedings Before the Commission. The first page of the copy of, or summary of, the agency's decision, and the first page of the index, must include the designation "Consolidated Record" and the Commission's docket number for the proceeding in the upper right corner. In addition, § 388.112 of the Commission's regulations, 18 CFR 388.112 (2005), sets forth procedures to be followed for submissions to the Commission that contain critical energy infrastructure information (CEII) or other information for which protective treatment is requested. CEII, as defined by § 388.113(c) of the regulations, includes information about proposed or existing energy facilities that could be used in planning an attack on critical infrastructure. In compiling the consolidated record for a proceeding, the Commission will maintain a public record of public decisions and actions. To the extent the record of a decision or action by an agency or official contains CEII or other information for which protective treatment is appropriate, this information should be submitted to the Commission in accordance with the procedures described in § 388.112 to ensure the information is not placed in the Commission's public records.

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The information requirements under FERC-537, FERC-539 apply to jurisdictional pipelines. Most of the companies regulated by the Commission do not fall within the Regulatory Flexibility Act's definition of a small entity.

State agencies acting under federally delegated authority do not fall under the RFA definition of a small entity;¹⁸ or the subsection defining small governmental jurisdictions.¹⁹ RFA section 601(5) defines "small governmental jurisdiction" as governments of cities, counties, towns, and similar entities with a population of less than fifty thousand. The Commission has determined that no state agencies acting under federally delegated authority meet this definition.

6. CONSEQUENCE TO FEDERAL PROGRAM IF COLLECTION WERE CONDUCTED LESS FREQUENTLY

FERC-537, FERC-539 data collections are required for statutory purposes and cannot be discontinued nor collected less frequently. The information that must be submitted to the Commission is event driven. The same applies to requirements in the Final Rule.

Without such information, the Commission would be unable to fulfill its statutory responsibilities under the NGA, NGPA, NEPA and the Energy Policy Act of 2005. Congress has provided the Commission with additional authority to (1) coordinate the processing of authorizations required under federal law for proposed natural gas projects subject to NGA sections 3 and 7 and (2) maintain a complete consolidated record of decisions with respect to such federal authorizations.

7. EXPLAIN ANY SPECIAL CIRCUMSTANCES RELATING TO THE INFORMATION

The number of copies of a certificate application to be filed in compliance with Section 157.6 includes an electronic media submission along with an original and seven hard copies. The number of copies to be filed is more than prescribed by OMB in their guidelines at 5 CFR 1320.5(d) (2). The additional copies are necessary because of the number of offices within the Commission that must review and analyze the application in a timely fashion. Project sponsors will be required to submit an additional exhibit with each application. However, the information in the new exhibit already should be readily available to the project sponsor; the new reporting requirement merely directs that this information be summarized and presented in tabular form.

The new § 153.4 – which specifies that the procedural filing requirements of Part 157 of

¹⁸ 5 U.S.C. 601(6) (2000).

¹⁹ 5 U.S.C. 601(5) (2000).

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the Commission's regulations that apply to applications under NGA section 7, also apply to applications under NGA section 3 – codifies current practice. As noted, project sponsors submitting NGA section 3 applications have historically adhered to the general filing procedures set forth in part 157 of the regulations; therefore, the Commission does not view its endorsement of this past practice as imposing any additional reporting burden on NGA section 3 applicants.

FERC-606, "Notification of Request for Federal Authorization and Requests for Further Information" which requires agencies or officials issuing, conditioning, or denying requests for federal authorizations necessary for a proposed natural gas project to inform the Commission of requests received and additional information, if any, requested of the applicant by the agency or official, and FERC-607, "Report on Decision or Action on Request for Federal Authorization," which requires agencies or officials to submit to the Commission a copy of a decision or action on a request for federal authorization and an accompanying index to the documents and materials relied on in reaching a conclusion.

**8. DESCRIBE EFFORTS TO CONSULT OUTSIDE THE AGENCY:
SUMMARIZE PUBLIC COMMENTS AND THE AGENCY'S RESPONSE
TO THESE COMMENTS**

The Commission's procedures require that the rulemaking notice be published in the Federal Register, thereby allowing all pipeline companies, state commissions, federal agencies, and other interested parties an opportunity to submit comments, or suggestions concerning the proposal. The rulemaking procedures also allow for public conferences to be held as required. Comments were due 60 days from publication in the Federal Register.

As noted above, the Commission issued a Notice of Proposed Rulemaking (NOPR) in Docket No. RM06-1-000,²⁰ requesting comments on proposed regulations to implement section 313 of the Energy Policy Act of 2005 (EPAAct 2005).²¹ The NOPR was published in the Federal Register on May 30, 2006.²²

Comments on the NOPR were filed by Baker Botts, L.L.P. (Baker Botts); Cheniere Energy, Inc. (Cheniere); City of Fall River, Massachusetts; Coastal States Organization; Conservation Law Foundation; Delaware Department of Natural Resources and Environmental Control, Division of Soil & Water Conservation (Delaware DNR); U. S. Department of the Army Corps of Engineers (Army COE); Dominion Transmission, Inc., Dominion Cove Point LNG, LP, and Dominion South Pipeline Company, LP (Dominion); Duke Energy Transmission, LLC (Duke); United States Environmental Protection Agency (EPA); Interstate Natural Gas

20 ? 71 FR 30632 (May 30 2006); FERC Stats. & Regs. ¶ 32,601 (2006); 115 FERC ¶ 61,203 (2006).

21 ? Pub. L. No. 109-58, 119 Stat. 594 (2005).

22 ? 71 FR 30632 (May 30, 2006).

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Association of America (INGAA); United States Department of the Interior (Interior); Islander East Pipeline Company, L.L.C. (Islander East); Mr. Mark Mendelson; Massachusetts Office of the Attorney General; Massachusetts Executive Office of Environmental Affairs (Massachusetts EOEA); New Jersey Department of Environmental Protection (New Jersey DEP); Columbia Gas Transmission Corporation, Columbia Gulf Transmission Company, Crossroads Pipeline Company, Granite State Gas Transmission, Inc., and Central Kentucky Transmission Company (collectively NiSource); Oregon Coastal Management Program; United States Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS); and Williston Basin Interstate Pipeline Company (Williston).

Coordinating Federal Authorizations - When to Submit Requests for Federal Authorizations

Proposed §§ 153.8 and 157.14 specify that an application filed with the Commission for a natural gas project under NGA section 3 or 7 must include:

A statement identifying each Federal authorization that the proposal will require; the Federal agency or officer, or State agency or officer acting pursuant to delegated Federal authority, which will issue each authorization; the date each request for authorization was submitted; and the date by which final action on each Federal authorization has been requested or is expected.

The NOPR observed that if an application does not include this proposed new information statement, the Commission may deem the application incomplete. Several commenters explained that it is impractical, if not impossible, to submit applications for all federal authorizations before or contemporaneously with the project application filed with the Commission. These commenters proposed instead that a project sponsor be permitted to file an application with the Commission first; list the authorizations necessary for the new project; identify those authorizations for which applications have already been submitted and the dates upon which they were submitted; and then state the dates by which any outstanding authorization requests will be submitted.

Commission Response: The Commission observes that most applications to construct major new gas projects are filed with the Commission after the project sponsor has participated in the Commission's pre-filing process. This pre-filing period affords a project sponsor, Commission staff, and staff from other agencies the opportunity to identify which federal authorizations will be needed for a project, and ample time for the project sponsor to prepare requests for related federal authorizations in advance of filing an application with the

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Commission. Therefore, the prefiling process can establish coordination among the agencies responsible for reviewing a project proposal and diminish the chance that the Commission might find an application to be incomplete.

The Commission nevertheless acknowledges that there may be circumstances that preclude a project sponsor from presenting all requests for necessary federal authorizations by the time it files an application with the Commission. Therefore, §§ 153.8 and 157.14 of the Commission's regulations will be modified to provide for a sponsor to explain why requests for federal authorizations remain outstanding and state anticipated dates for submitting such requests. A project sponsor will now be required to state "the date each request for authorization was submitted; why any request has not been submitted and the date submission is expected; and the date by which final action on each Federal authorization has been requested or is expected." For requests that remain outstanding at the time an application is filed, the Commission will review the reasons given, the projected dates of submission, and an applicant's interactions with the agencies. The Commission may then accept the application for consideration, and based on the state of documents and studies needed to support prospective authorization requests, accept the projected submission dates as a basis for establishing a schedule.

Informing the Commission upon Receipt of an Authorization Request

New § 385.2013 specifies that within 30 days of receiving an authorization request, an agency must inform the Commission of: (1) whether the agency deems the application to be 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 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 decision; and (5) if applicable, the schedule set forth by federal law for the agency to act. Further, if an agency asks for additional information, the agency is to provide the Commission with a copy of its data request.²³

Commenters claim that 30 days is an unreasonably short time to be able to render a meaningful assessment of an authorization request.

Commission Response: The Commission recognizes that 30 days will often be insufficient for agencies to reach definitive conclusions on each of the stipulated aspects of an

²³ ? This establishes the minimum information required of an agency. EPA, Duke, and Islander East suggest a more collaborative approach to establish a schedule. To this end, the Commission invites agencies to go beyond the requisite minimum and provide additional information, which the Commission will consider in exercising its scheduling responsibilities. Further, in determining a schedule appropriate to a particular application, Commission takes into account not only agencies' input but also the project sponsor's proposed construction schedule and in-service date.

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authorization request. But that is not the intent. Instead, the information submission is intended to give the Commission an overview to enable it to determine a realistic timetable for the environmental review process. The Commission recognizes that agencies' reports will necessarily be provisional and subject to change, and will take this into account both when first determining a schedule for its NEPA review, and thereafter, to take into account agencies' progress in processing authorization requests.

For the purpose of measuring the time for an agency to act on an authorization request, in the NOPR the Commission explained the clock begins to run on the day a request is submitted to the agency. Interior questions whether this would be the day a request is sent or the day it is received.

Commission Response: The Commission clarifies that the day the agency receives a request is the first day counted. This is unlikely to be the day an agency takes official notice that a complete application has been received and is ready for processing; rather, this will be the first day an agency is in receipt of a formal written request by a project sponsor for an authorization needed for a prospective NGA section 3 or 7 project.

Commenters are concerned with the prospect that an agency might receive a cursory authorization request that could not be evaluated absent additional information. The NOPR stated that if an agency deems a request to be incomplete, and the project sponsor fails to provide the necessary information in time for the agency to reach a decision by the Commission's scheduled deadline, then the agency may deny the request.²⁴ In turn, the Commission may deny the application before it, or authorization to commence construction, due to the project sponsor's failure to obtain a necessary federal authorization.

Commission Response: The Commission reiterates that whether an agency finds a request complete has no bearing on the agency's allotted response time. That said, the Commission does not expect to have to frequently reject NGA applications due to imperfections in requests for related federal authorizations in view of the decision to revise the procedural schedule, as described above, to tie agencies' deadlines to issuance of the EA or final EIS. This approach to scheduling should give agencies and applicants adequate advance notice of when

²⁴ ? This presumably would be the outcome with respect to an authorization required for a project if, as the Oregon Coastal Management Program and Coastal States Organization speculate, the agency is unable to obtain all the information needed to make an appropriate assessment of the proposal in time to meet the scheduled deadline for a final decision. Dominion requests that if an agency informs the Commission that a project sponsor has not adequately supported its request, then "the Commission will give the applicant an opportunity to respond and cure the alleged deficiencies." Dominion's Comments at 11 (July 31, 2006). In the event of a disagreement regarding the adequacy of the contents of a request for a federal authorization, the Commission may find reason to revise an agency's deadline for a final decision. However, although the Commission implores project sponsors and agencies to work cooperatively, it cannot compel them to do so. An agency retains the discretion to reject a request on the grounds that information necessary to reach a decision is lacking.

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decisions on requests for federal authorizations will be due, and motivate project sponsors to make all necessary information available in order for agencies to reach timely decisions on the merits.

The Army COE asks if submitting an electronic copy to the Commission of the agency's response to a project sponsor's authorization request would satisfy the § 385.2013 reporting requirement.

Commission Response: It would, provided the submission contains the specified information; moreover, as discussed herein, submission to the Commission need not be by electronic means. Regardless of whether an agency's submission is made electronically or by paper copy, it should be filed in the PF or CP docket number, if available, assigned to the project sponsor's application to the Commission.

Consolidated Record

Section 313 of EPA Act 2005 directs the Commission to "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."

The NOPR proposed to require agencies and officers issuing decisions or approvals necessary for proposed projects under NGA sections 3 and 7 to provide the Commission with a copy of the final decision reached or action taken, or a summary thereof, within three days of issuance of a final decision or action. The Commission proposed requiring agencies and officers to file an index of the record, identifying all documents and materials — including pleadings, comments, evidence, exhibits, transcripts of testimony, project alternatives (including alternative routings), studies, and maps — relevant to the decision, within three days of issuance of a final decision or action.

Commenters object to the proposed requirement that a copy of the decision and an index to the record be filed within three days of the decision and suggest that the Commission allow 30 days for the filing of the decision and record index. In addition to promoting a 30-day interval, the Conservation Law Foundation recommends the Commission reimburse agencies for reasonable costs incurred in providing the index.

Commission Response: The Commission accepts the claim that three days may not provide every agency with adequate time to organize and send the requested information — although, if an agency maintains and updates its index throughout the course of its proceeding,

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all it need do when a decision is issued is add the decision, or a summary thereof, to the index and submit it to the Commission. The Commission anticipated agencies' submission of the requested information would be merely ministerial, *i.e.*, that the information would be available and electronically transmittable – or at least, easily duplicated and then sent – on the same day a final decision was reached. Commenters persuasively argue that this is not the case. In any event, the Commission does not believe that it is necessary to receive an agency's information within three days of a final decision in order to satisfy the EAct 2005 mandate to maintain a complete consolidated record. Accordingly, the Final Rule revises the reporting requirement to provide agencies and officers 30 days, not three, to submit a final decision, or summary thereof, and index to the Commission. Further, while the Commission encourages electronic submissions, the proposed regulations are modified to provide the option to make paper filings with the Commission.²⁵ In view of this modification to the means of filing, the Commission will modify the time provided for agencies to file a copy of data requests with the Commission, extending it from three days to 10 business days.

The Commission finds no cause to adopt the Conservation Law Foundation's request to provide reimbursement to agencies for expenses related to compliance with the provisions of this rule. Compliance is mandatory pursuant to the authority provided to the Commission by EAct 2005. Further, in view of the revision above regarding the time permitted and means of submission, and the clarification below regarding the contents of the index, the Commission expects the additional cost incurred by agencies to meet these new reporting requirements will not be unduly burdensome.

Commenters' objections to submitting an index appear to stem in part from an overly broad interpretation of what this index must include. The Commission clarifies that the index need not summarize the contents of each item in the agency's record; rather, the index can be any method of notation capable of identifying each item in the record sufficiently to allow a reviewing body to select items of relevance to an issue on appeal. The Oregon Coastal Management Program observes that it typically relies on and references the outcome of multiple state and local actions, but does not include in its record the underlying documents that make up the record in those other actions. There is no need for agencies that follow such an approach to make any adjustment. Any methodology and recordkeeping that an agency now employs that is sufficient to serve as the basis for appeals or reviews is an acceptable "index" for the purposes of the consolidated record. Note that in filing an index, agencies should title the submission "Consolidated Record" and include a prominent reference on the first page to the docket number applied to the Commission proceeding which gave rise to the request for agency authorization.

²⁵ ? As is currently the case, agencies will be expected to conform their filings to the requirements of 18 CFR 385.2003, to the extent that they are able.

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Baker Botts requests the Commission require that agencies provide the Commission with their full record, and not just an index thereto.

Commission Response: The Commission finds no cause to require agencies to reproduce and transmit the contents of their entire record to the Commission. Only in the event of appeal will there be any call to view the original or duplicate materials, and even then it is unlikely anything other than a limited subset of the record will be relevant. Therefore, provided an index is prepared, and original materials are retained and available for a minimum of three years, or until an appeal or review is concluded, there should be no delay in producing the portion of an agency's record requested by a reviewing entity.

The Army COE points out that when it issues a requested permit, the permit with terms and conditions is sent to the applicant, which has 60 days to appeal the terms and conditions if it chooses to do so; if the permit is denied, the applicant may appeal the denial. The Army COE asks that the date of final agency action for purposes of providing the record to the Commission be "at the end of any appeals process."

Commission Response: The Commission expects that individual agencies' own regulations will determine when their actions are considered "final" and thereby start the 30-day clock for filing their decisions and indices with the Commission. However, the Commission will consider a decision or action on a request for a federal authorization to be "final," and consequently subject to the 30-day deadline for filing with the Commission, if the projects sponsor submitting the request can rely on an affirmative determination as sufficient authority to proceed. In other words, the agency's deliberation must go beyond verification that a request is complete, or a preliminary determination, or an agency decision that approves a project sponsor's application but makes its right to proceed contingent on the outcome of certain agency review or appeal processes; *i.e.*, the outcome of the agency's final decision or action must grant, condition, or deny the applicant's requested authorization. At this point, the 30-day period begins for an agency to provide the Commission with a copy of its decision, or a summary, and an index to its record in the proceeding. The 30-day period should permit the Commission to receive agencies' decisions and indices in time to compile a complete consolidated record for the purposes of judicial review (or in the case of a CZMA determination, review by the Department of Commerce).²⁶

²⁶ ? The Commission notes that when it issues an order granting a project sponsor a section 7 certificate or section 3 authorization under the NGA to construct gas facilities, clearance to commence construction generally is withheld until the project sponsor has obtained other necessary authorizations from other agencies. However, once such authorizations have been obtained by the project sponsor, the project sponsor generally is granted clearance to commence construction, notwithstanding any pending requests for rehearing.

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The Army COE asserts the Commission should forward Freedom of Information Act (FOIA) requests to agencies, instead of preparing a response using the consolidated record.

Commission Response: The Commission clarifies that FOIA requests should be submitted directly to the agency responsible for generating the information in question. While an agency’s index filed with the Commission may be useful in identifying records relevant to a FOIA request, the Commission will not be capable of effectively responding to FOIA requests, or other types of requests, that concern the substantive matters of another agency’s proceeding. Further, the Commission’s responsibilities under EPOA 2005 do not include compiling documents to respond to FOIA requests. The Commission does not expect to receive or respond to FOIA requests, unless the information sought is part of the Commission’s own record of its deliberations in a particular proceeding.

9. EXPLAIN ANY PAYMENT OR GIFTS TO RESPONDENTS

There are no payments or gifts to respondents in the proposed rule.

10. DESCRIBE ANY ASSURANCE OF CONFIDENTIALITY PROVIDED TO RESPONDENTS

The Commission does not consider the information to be confidential. However, the Commission has encouraged prospective applicants to submit preliminary corridor or route information maps which may contain Critical Energy Infrastructure Information (CEII). CEII as defined in section 388.113 of the Commission’s regulations includes information about proposed or existing natural gas facilities that could be used by a person planning an attack on critical energy infrastructure. The Commission’s procedures in section 388.112 are designed to ensure that CEII is not placed in the Commission’s public records. .

11. PROVIDE ADDITIONAL JUSTIFICATION FOR ANY QUESTIONS OF A SENSITIVE NATURE

There are no questions of a sensitive nature associated with the posting requirements contained in the Final Rule.

12. ESTIMATED BURDEN COLLECTION OF INFORMATION

| OMB | CURRENT | OMB | PROPOSED | PROPOSED | NEW |
|---------------------------------|------------|-----|----------|----------|-----|
| DATA REQUIREMENT (FERC-537) | INVENTORY* | IN | NOPR | IN FR | |
| INVENTORY | | | | | |
| Estimated number of respondents | : | 76 | 76 | 76 | 76 |

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| | | | | |
|---|---------|-------|--------|---------|
| Estimated number of responses per respondent: | 10.72 | 10.72 | 10.72 | 10.72 |
| Estimated number of responses per year : | 815 | 815 | 815 | 815 |
| Estimated number of hours per response : | 245.82 | .5 | 246.32 | |
| 246.32 | | | | |
| Total estimated burden (hours per year) : | 200,344 | 408 | 408 | 200,752 |
| Program change in industry burden hours : | | + 408 | | |
| Adjustment change in industry burden hours : | | -0- | | |
| *OMB Inventory as of 6/30/06 | | | | |

| | CURRENT OMB | PROPOSED | PROPOSED | NEW |
|---|-------------|----------|----------|--------|
| | INVENTORY* | IN NOPR | IN FR | |
| OMB | | | | |
| DATA REQUIREMENT (FERC-539) | | | | |
| INVENTORY | | | | |
| Estimated number of respondents : | 12 | 12 | 12 | 12 |
| Estimated number of responses per respondent: | 1 | 1 | 1 | 1 |
| Estimated number of responses per year : | 12 | 12 | 12 | 12 |
| Estimated number of hours per response : | 303.83 | .5 | .5 | 304.33 |
| Total estimated burden (hours per year) : | 3,646 | 6 | 6 | 3,652 |
| Program change in industry burden hours : | | + 6 | | |
| Adjustment change in industry burden hours : | | -0- | | |
| *OMB Inventory as of 6/30/06 | | | | |

| | CURRENT OMB | PROPOSED | PROPOSED | NEW OMB |
|---|-------------|----------|----------|---------|
| | INVENTORY* | IN NOPR | IN FR | |
| DATA REQUIREMENT (FERC-606) | | | | |
| INVENTORY | | | | |
| Estimated number of respondents : | 0 | 48 | 48 | 48 |
| Estimated number of responses per respondent: | 0 | 34.46# | 34.46# | 35 |
| Estimated number of responses per year : | 0 | 1702 | 1702 | 1702 |
| Estimated number of hours per response : | 0 | 4.4 | 4.4 | 4.4 |
| Total estimated burden (hours per year) : | 0 | 7489 | 7489 | 7489 |
| Program change in industry burden hours : | | + 7,489 | | |
| Adjustment change in industry burden hours : | | -0- | | |
| *OMB Inventory as of 6/30/06 | | | | |

| | CURRENT OMB | PROPOSED | PROPOSED | NEW OMB |
|---|-------------|----------|----------|---------|
| | INVENTORY* | IN NOPR | IN FR | |
| DATA REQUIREMENT (FERC-607) | | | | |
| INVENTORY | | | | |
| Estimated number of respondents : | 0 | 48 | 48 | 48 |
| Estimated number of responses per respondent: | 0 | 34.46# | 34.46# | 35 |
| Estimated number of responses per year : | 0 | 1654 | 1654 | 1654 |
| Estimated number of hours per response : | 0 | 6.3 | 6.3 | 6.3 |
| Total estimated burden (hours per year) : | 0 | 10,423 | 10,423 | 10,423 |
| Program change in industry burden hours : | | + 10,423 | | |
| Adjustment change in industry burden hours : | | -0- | | |

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*OMB Inventory as of 6/30/06
 #rounded off

Total Annual Hours for Collection: 18,326 hours

The Commission anticipates that only minor modifications to current practice and procedure will be necessary to satisfy these proposed requirements. The Commission assumes that upon initial receipt of a request for federal authorizations, agencies make an initial assessment to verify whether the request is ready for processing.

New § 385.2013 directs the agency or official to forward that initial assessment to the Commission. If in the course of processing a request, an agency or official finds additional information from the applicant is needed, proposed new § 385.2013 directs the agency or official to forward to the Commission a copy of any data request sent to the applicant.

With respect to new § 385.2014, the Commission assumes that in considering a request for a federal authorization, agencies compile and title the documents and materials they rely upon in reaching a decision. The Commission is not proposing a specific format for an index; thus, an agency’s in-house recordkeeping may be presented as an index as long as it functions as a table of contents to the documents and materials.

13. ESTIMATE OF TOTAL ANNUAL COST OF BURDEN TO RESPONDENTS

Because of the regional differences and the various staffing levels that will be involved in preparing the documentation (legal, technical and support) the Commission is using an hourly rate of \$150 to estimate the costs for filing and other administrative processes (reviewing instructions, searching data sources, completing and transmitting the collection of information). The estimated cost is anticipated to be \$2,748,900. (18,326 x \$150)

14. ESTIMATED ANNUALIZED COST TO FEDERAL GOVERNMENT:

The estimated annualized cost to the Federal government related only to the data collections/requirements as proposed in the subject Final Rule are shown below:

| Data Requirement Number | Analysis of Data (FTEs) | x | Estimated Salary per Year | = | Total Cost Year's Operation |
|-------------------------|-------------------------|---|---------------------------|---|-----------------------------|
| FERC-537 | 8.0 | | \$117,321 | | \$ 938,568 |
| FERC-539 | 3.0 | | \$117,321 | | \$ 351,963 |
| FERC-606 | 1.0 | | \$117,321 | | \$ 117,321 |
| <u>FERC-607</u> | <u>.50</u> | | <u>\$117,321</u> | | <u>\$ 58,661</u> |

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| | | | |
|-------|------|-----------|-------------|
| Total | 12.5 | \$117,321 | \$1,466,483 |
|-------|------|-----------|-------------|

15. REASONS FOR CHANGES IN BURDEN INCLUDING THE NEED FOR ANY INCREASE

See reasons for program change in Background section above.

16. TIME SCHEDULE FOR PUBLICATION OF DATA

The time schedule for the proposed requirements in this Final Rule are shown in the following table.

Schedule for Data Collection and Analysis

| <u>Activity</u> | <u>Estimated Completion Time</u> |
|-------------------|----------------------------------|
| Application Filed | Event Oriented |

In the Final Rule:

Notice of each application may itemize each permit, special use authorization, certificate, opinion, or other approval that will be required under Federal law, and may specify a schedule for each Federal agency or officer, or State agency or officer acting pursuant to delegated Federal authority, to act on a request for Federal authorization. Final action on a request for Federal authorization is due after the issuance of the Commission’s final environmental document, or final order if no environmental document is issued, unless a schedule is otherwise established by Federal law or by the Commission.

No later than 90 days.

A Federal or State agency or officer 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, by electronic means, after submitting the request to the applicant.

Within 10 days.

17. DISPLAY OF EXPIRATION DATE

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Not applicable. The data requirements under FERC-537, FERC-539, FERC-606 and FERC-607 are based on regulations and not filed on formatted/printed forms. Thus, the subject data requirements do not have an appropriate format to display an OMB expiration date. An applicant is to follow these procedures prior to filing an application with the Commission.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

There are exceptions to the Paperwork Reduction Act statement. Because the data collected (pre-filing process) are not submitted on a standardized form, the Commission does not display the expiration date. In addition, the Commission does not use statistical survey methodology for these information collections.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

Not Applicable. Statistical methods are not employed for these data collections.