

OFFICE OF ENERGY PROJECTS

**Guidance for Federal and State Agencies for  
the Processing of Federal Authorizations  
in Cooperation with the FERC**

With the passage of the Energy Policy Act of 2005 (EPAct 2005), Congress amended the Natural Gas Act to require the Federal Energy Regulatory Commission (FERC) to coordinate the environmental review and the processing of all federal authorizations<sup>1</sup> relating to proposals for natural gas infrastructure under the FERC's jurisdiction (pipelines, storage fields, compressor stations, liquefied natural gas facilities, etc.) and to maintain a consolidated record for any subsequent appeal or judicial review.

On December 26, 2006 the FERC issued a Final Rule (Order 687) and regulations establishing the process by which the FERC will exercise its new responsibilities under section 313 of EPAct 2005. We note that nothing in EPAct 2005 or the Commission's regulations preempt existing agency timelines mandated by federal law or regulation.

Specifically, the FERC is now required to:

- ✓ Act as the lead agency for purposes of complying with the National Environmental Policy Act;
- ✓ Set an expeditious schedule for all Federal agencies and state agencies acting under federal delegated authority, to reach a final decision on requests for Federal authorizations necessary for proposed natural gas infrastructure projects; and
- ✓ Maintain a consolidated record of all decisions and actions the Commission and other agencies take with respect to such authorizations.

In order for the FERC to comply with its new requirements, agencies responsible for issuing federal authorizations are now required to provide certain information to the FERC. To assist agencies in becoming more familiar with our regulations, we have developed a flow chart and an "Agency to do List" to show the process timeline and to outline the agencies' responsibilities. Additional information regarding EPAct 2005 and FERC's implementing regulations can be found on the Internet at: [www.ferc.gov/legal/maj-ord-reg/fed-sta/ene-pol-act.asp](http://www.ferc.gov/legal/maj-ord-reg/fed-sta/ene-pol-act.asp).

Becoming familiar with the requirements of this new process is essential. The FERC staff is confident that by working cooperatively with the agencies we will be able to successfully satisfy

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<sup>1</sup> EPAct 2005 section 313 describes "federal authorizations" as decisions or actions by a federal agency or official, "or State administrative agency or officer acting under delegated Federal authority," granting or denying requests for permits, certificates, opinions, approvals, and other authorizations.

each of our respective statutory and regulatory responsibilities. For specific projects, the FERC environmental project manager will also assist you in understanding these new regulations.

Questions regarding the coordination of the environmental review and the issuance of federal authorizations or our maintenance of the consolidated federal record can be directed to Douglas A. Sipe, Gas Outreach Manager at 202.502.8837, [douglas.sipe@ferc.gov](mailto:douglas.sipe@ferc.gov).

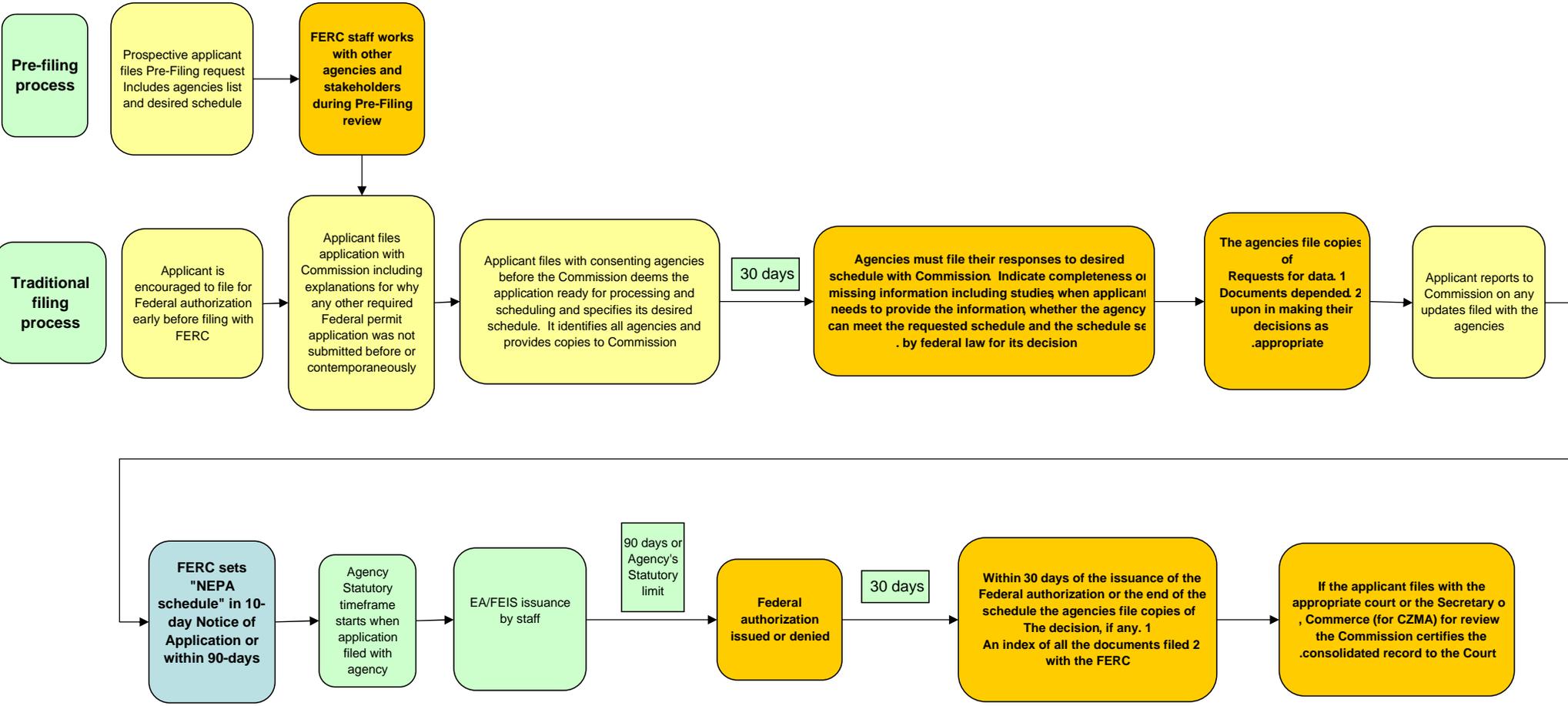
Enclosures (2)

(August 30, 2007)

# Scheduling/Consolidated Record Process Rule

(Order 687)

effective date: 12/26/2006



# AGENCY TO DO LIST

(May 4, 2007)

## **Agency Responsibilities Under the Federal Energy Regulatory Commission's New Regulations Coordinating the Processing of Federal Authorizations for Interstate Natural Gas Projects Under Section 3 and 7 of the NGA and Maintaining a Complete Consolidated Record [Order 687, effective date December 26, 2006]**

This outline is intended to assist Agencies issuing permits or authorizations under Federal statutes in understanding the Federal Energy Regulatory Commission's (FERC) Order 687 and the responsibilities therein. Please note that filing requirements pertaining to the Agencies appear in **BOLD** text.

### Pre-filing Activities

- Work with the FERC staff and Applicant during the Pre-filing Process to identify specific Agency concerns.
- Maintain consistent points of contact.
- Attend project inter-agency meetings.
- Make firm commitments in writing.
- Be cognizant of concerns outside the Agency's area of responsibility.
- Discuss the Federal authorization process candidly with the Applicant early in the formulation of the project.
- Recognize that when an Applicant submits request for Federal authorization, in accordance with Commission's regulations, this begins your process timing.

### Post - Application Activities

- **Within 30 days of receiving an authorization request, an Agency must file the following information with the Secretary of the Commission of:**
  - a) **whether the Agency deems the application ready for processing or complete;**
  - b) **what additional information will be needed to address the merits of the request;**
  - c) **the time allotted for the Applicant to provide the additional information or materials;**
  - d) **what, if any, studies would be necessary to evaluate the request; and**
  - e) **the anticipated effective date of Agency's decision.**

# AGENCY TO DO LIST

(May 4, 2007)

- **If Agency requests additional information from Applicant, the Agency must file a copy of the request with the Commission within 10 business days of issuance.**
- FERC will issue a “Notice of Schedule for Environmental Review” within 90 days FERC’s notice of application to FERC.
- The schedule will inform Agencies of the 90-day deadline for other Federal decisions on the application upon the issuance of FERC’s final environmental document [Environmental Assessment (EA) or Final Environmental Impact Statement (FEIS)]. The objective is to have all Agency reviews and decision completed no later than 90 days after FERC issues an EA or FEIS.

## *Post - FERC Authorization Activities*

- FERC is required to maintain a complete consolidated record of all decisions made or actions taken by the Commission and by Agencies responsible for any Federal authorization.
  - Agencies or officers issuing decisions or approvals necessary must help to create this record and provide the Commission with a copy of the final decision reached or action taken, or summary thereof, within 30 days of a decision or action.
- The Commission considers an Agency decision to be final if it grants an Applicant authority to act, regardless of whether the decision is appealed.
  - Complete consolidated record is for decisions and appeals of CZMA, judicial review of Agency actions or failure to act.
  - The intent of the record and schedule is to reduce redundancy and sequential processing.
- **If an Agency issues its authorization by the scheduled or statutory deadline, the Agency must file an index with the Commission within 30 days of its decision or action.**
  - 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.
  - 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.
- **If an Agency fails to issue its authorization by the scheduled or statutory deadline, the Agency must file an index with the Commission of all documents being reviewed.**