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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Parts 153, 157 and 375

[Docket No. RM05-31-000]

Regulations Implementing Energy Policy Act of 2005; Pre-Filing Procedures for
Review of LNG Terminals and Other Natural Gas Facilities

(Issued August 26, 2005)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing regulations in accordance with section 311(d) of the Energy Policy Act of 2005 (EPAcT 2005) to implement mandatory procedures requiring prospective applicants to begin the Commission's pre-filing review process at least six months prior to filing an application for authorization to site and construct a liquefied natural gas (LNG) terminal. As proposed, the mandatory procedures would require that the prospective applicant submit information necessary for pre-filing review of the LNG terminal, as defined in EPAcT 2005, as well as any pipeline and other natural gas facilities necessary to transport regasified LNG from an LNG terminal to existing natural gas pipeline infrastructure. As required by EPAcT 2005, the proposed regulations are designed to encourage applicants to cooperate with state and local officials to address safety considerations. A prospective applicant also would be required to comply with the pre-filing procedures prior to filing an application to make significant modifications to an existing LNG terminal likely to involve state and local safety considerations. Under the proposed regulations, prospective applicants could continue to elect on a voluntary basis to undertake the pre-filing process prior to filing applications for other facilities subject to the Commission's jurisdiction under the Natural Gas Act (NGA).

DATES: Comments on the Notice of Proposed Rulemaking are due September 14, 2005.

ADDRESSES: Comments may be filed electronically via the eFiling link on the Commission's web site at <http://www.ferc.gov>. Commenters unable to file comments electronically must send an original and 14 copies of their comments to: Federal

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Energy Regulatory Commission, Office of the Secretary, 888 First Street N.E., Washington, DC, 20426. Refer to the Comment Procedures section of the preamble for additional information on how to file comments.

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SUPPLEMENTARY INFORMATION:

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Regulations Implementing Energy Policy Act of 2005;)
Pre-Filing Procedures for Review of) Docket No. RM05-31-000
LNG Terminals and Other Natural Gas Facilities 000)

NOTICE OF PROPOSED RULEMAKING

(Issued August 26, 2005)

I. Introduction

1. Pursuant to section 311(d) of the Energy Policy Act of 2005 (EPA 2005), the Commission is required, by October 7, 2005, to promulgate regulations requiring prospective applicants for authorization to construct liquefied natural gas (LNG) terminals (as defined in EPA 2005) to comply with the Commission's pre-filing review process, beginning at least six months prior to filing an application. As further required by EPA 2005, the proposed regulations encourage applicants to cooperate with state and local officials.

2. Prior to any Commission decision regarding an application for LNG facilities, the Commission prepares an environmental assessment (EA) or environmental impact statement (EIS) to fulfill the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, *et seq.*, and the Commission's implementing regulations under Title 18, Code of Federal Regulations, Part 380, "Regulations Implementing the National Environmental Policy Act." The purpose of the document is to inform the public and permitting agencies about the potential adverse and/or beneficial environmental impacts of proposed projects and their alternatives. As with pipeline projects, a thorough analysis of any substantive issues relating to LNG facilities is undertaken during the preparation of an EA or EIS. The NEPA documents for new LNG terminals and expansions at existing sites include a thorough study of potential impacts to public safety.

3. To date, it has been the Commission's policy to encourage early involvement by the public and governmental agencies, as contemplated by NEPA and Council on Environmental Quality (CEQ) regulations, by promoting an optional pre-filing process for both interstate gas pipeline and LNG terminal projects. Specifically, in the case of LNG project proposals, pre-filing activity is one of three distinct phases of activity that

the Commission undertakes in fulfilling its goal of assuring the safe operation and system reliability of proposed and operating jurisdictional LNG facilities throughout the United States.¹

4. Typically, prior to filing an LNG-related application, company representatives meet with Commission staff to explain the project and solicit advice. These meetings provide prospective applicants the opportunity for Commission staff to offer suggestions related to environmental, engineering, and safety features of the proposal. At this stage, Commission staff reviews conceptual designs of planned LNG facilities; provides guidance on resolving potential environmental, safety, and design issues; explains the level of design detail and safety analysis required for a complete application; and assists potential applicants in developing plans for ensuring extensive public involvement in the application process. In this manner, Commission staff learns about future projects which may be filed at the Commission, helps companies in their application preparation, and ensures that the public is included in the process.

5. Because it is desirable to maximize early public involvement to promote the wide-spread dissemination of information about proposed projects and to reduce the amount of time required to issue an EIS or EA once an application is filed, the Commission's Office of Energy Projects (OEP) has developed guidelines for going beyond informal discussions into a more formal pre-filing process. These guidelines were developed because in certain respects the collaborative pre-filing procedures for use by prospective applicants set forth in section 157.22 of the Commission's regulations have proven to be impracticable.² Therefore, the Commission is proposing to eliminate the collaborative process procedures of section 157.22 in conjunction with codification of the pre-filing procedures and regulations proposed in this notice.

6. Under the Commission's current guidelines, when a prospective applicant elects to undertake the Commission pre-filing process, the prospective applicant submits a written request to the Director of OEP for staff assistance with the pre-filing process seven to eight months prior to filing an application. The request: (1) explains why the prospective applicant wants to use the pre-filing process, including time considerations; (2) lists the federal and state agencies in the project area with relevant permitting requirements, documents that those agencies are aware of the prospective applicant's intention to use the Commission's pre-filing process, provides the Commission with contact names and phone numbers, and verifies that the federal

¹ The other two phases of a project timeline for any LNG proposal are pre-decision analysis and post-decision construction/operation inspection and monitoring.

² 18 C.F.R. § 157.22 (2005).

agencies agree to participate in this process; (3) identifies other interested persons and organizations who have been contacted about the project; (4) details what work has been done already, *i.e.*, contacting landowners, agency consultants, project engineering, and route planning; (5) states that the prospective applicant will provide a list of potential third-party contractors who can prepare the requisite NEPA document, from which Commission staff will make a selection; (6) acknowledges that a complete Environmental Report and complete application are still required at the time of filing; and (7) details a Public Participation Plan which identifies specific tools and actions to facilitate stakeholder communications and public information, including establishing a single point of contact. Prospective applicants are strongly encouraged to establish a project web-site where interested persons can go for information such as copies of applications to other agencies. Also, preliminary corridor or route information maps are highly desirable.³

7. In recent years, Commission staff has sought to promote use of the pre-filing process by prospective applicants for all major natural gas projects, including LNG projects. If the guidelines for requesting the pre-filing process are satisfied by a prospective applicant, a written acceptance is issued by the Director of OEP, and a PF docket number is assigned.

8. Commission staff's role in the pre-filing process is to work with stakeholders and the prospective applicant to ensure that a complete application is prepared, based on a thorough exploration of potential issues, and not to take any position on the merits of the potential application. Staff and third-party contractor pre-filing involvement is designed to encourage and promote a cooperative pre-filing process. On a case-by-case basis, this involvement will include some or all of the following: (1) assisting the prospective applicant in developing initial information about the proposal and identifying affected parties (including landowners and agencies); (2) issuing a Scoping Notice and conducting scoping for the proposal; (3) facilitating issue identification and resolution; (4) conducting site visits, examining alternatives, meeting with agencies

³ Section 388.112 of the Commission's regulations, 18 C.F.R. § 388.112 (2005), sets forth procedures to be followed by any person submitting documents containing critical energy infrastructure information (CEII). These procedures apply only to submissions of CEII to the Commission. CEII, as defined in section 388.113 of the 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. The regulations proposed by this notice would make the procedures in section 388.112 applicable to submissions by prospective applicants using the proposed pre-filing review procedures.

and stakeholders, and participating in the prospective applicant's public information meetings; (5) initiating the preparation of a preliminary EA or preliminary DEIS, which may include cooperating agency review; and (6) reviewing draft resource reports for the application that is to be filed with the Commission.

9. When the application for authorization to construct a pipeline project or to site an LNG terminal is filed, the Commission publishes a notice of the application in the *Federal Register* and establishes a deadline for interested persons to intervene in the proceeding. Because the pre-filing process occurs before an application to begin a proceeding is filed, petitions to intervene during this process are premature and are not accepted by the Commission.

10. As noted above, EAct 2005 requires the Commission implement a mandatory, rather than elective, pre-filing process for review of LNG terminal facilities prior to a prospective applicant's filing of an application for authorization of such facilities. In this regard, Congress has directed that the Commission promulgate regulations directing that the pre-filing process commence at least 6 months prior to the filing of an application and that the regulations encourage applicants to cooperate with state and local officials. To fulfill this mandate, the Commission is proposing to adopt its existing pre-filing process as the mandatory pre-filing process for review of LNG terminal facilities and associated jurisdictional pipeline facilities. The Commission's experience with the current pre-filing process is that it has been used with much success since its introduction several years ago. It is a process with which the natural gas industry, governmental entities and the public are familiar. To the extent that minor changes will improve the current process, we can consider them as a result of the comment process in this proceeding.

II. Summary of Proposed Regulations

11. As discussed above, the proposed regulations, in large measure, adopt the formal pre-filing process that the Commission currently utilizes when prospective applicants voluntarily elect to use the process. First, section 153.2 of the regulations would be amended by adding the definition of "LNG terminal" set forth in the new section 3A of the NGA added by section 311(d) of EAct 2005:

LNG Terminal means all natural gas facilities located onshore or in State waters that are used to receive, unload, load, store, transport, gasify, liquefy, or process natural gas that is imported to the United States from a foreign country, exported to a foreign country from the United States, or transported in interstate commerce by a waterborne vessel, but does not include:

(1) Waterborne vessels used to deliver natural gas to or from any such facility; or

(2) Any pipeline or storage facility subject to the jurisdiction of the Commission under section 7 of the Natural Gas Act.

12. A proposed new paragraph (c) would be added to section 153.6 to state that no application for an LNG terminal or associated jurisdictional pipeline facilities may be made before 180 days after the date of a notice by the Director of OEP announcing commencement of a prospective applicant's pre-filing process under the procedures of proposed new section 157.21, described below. A new definition would be added to section 157.1 to provide that, for the purposes of section 157.21, "Director" means the Director of the Commission's Office of Energy Projects.

13. Proposed new section 157.21 would establish the pre-filing process for LNG terminal facilities, as well as other natural gas facilities. The procedures would be mandatory for any prospective applicant for authorization to site, construct and operate facilities included within the definition of "LNG terminal," as defined in proposed section 153.2(d), and for any associated jurisdictional pipeline facilities. The pre-filing procedures also would be mandatory in cases where the Director finds that significant modifications to existing LNG terminal facilities involve state and local safety considerations. As discussed below, the pre-filing review process would remain voluntary for natural gas facilities not related to LNG terminals.

14. To initiate the pre-filing review process under proposed section 157.21, a prospective applicant for LNG terminal facilities would be required to make a filing containing certain material, as described below, and concurrently file a Letter of Intent and a Preliminary Waterway Suitability Assessment (WSA) with the U. S. Coast Guard.⁴

15. Proposed section 157.21(a)(2) would provide that an application for LNG terminal facilities and associated jurisdictional pipeline facilities (1) shall not be filed until at least 180 days after the date that the Director issues notice of the commencement of the prospective applicant's pre-filing process, and (2) shall contain all the information specified by Commission staff.

16. The information that a prospective applicant would be required to submit pursuant to section 157.21(a)(2) would include draft environmental material in accordance with the provisions of Part 380 of the regulations implementing the

⁴ Information concerning these documents may be found in the U. S. Coast Guard Navigation and Vessel Inspection Circular No. 05-05, dated June 14, 2005.

Commission's procedures under NEPA. The requirements in Part 380 of the Commission's regulations supplement the CEQ's regulations.⁵ The procedures in Part 380 essentially follow CEQ procedures concerning early and efficient review of environmental issues, public notice and participation, scoping, interagency cooperation, comments, and timing of decisions on proposals.

17. The environmental material required by the Part 380 regulations is embodied in sections 380.12, 380.13, 380.14 and 380.15 and Appendix A to Part 380. Section 380.12 describes resource reports which list, in detail, the information the Commission needs to conduct an environmental review of a proposal under NEPA. It consists of 13 resource reports ranging from a detailed project description to descriptions of the existing environment and potential impacts on environmental resources such as water use and quality, fish, wildlife and vegetation, cultural resources, land use and aesthetics, and air and noise and, for LNG terminal facilities, engineering and design material.

18. Sections 380.13 and 380.14 provide procedures and detailed descriptions of what the prospective applicant is expected to do to help the Commission comply with its obligations under the Endangered Species Act and the National Historic Preservation Act. Section 380.15 identifies best practices for the prospective applicant to follow when siting and maintaining facilities. Appendix A to Part 380 is a checklist of minimum environmental filing requirements.

19. Currently, when a prospective applicant elects to undertake the Commission's voluntary pre-filing procedures, it is required to use or file, as appropriate, all of the above-described Part 380 materials as it formulates its project and then files the application with the Commission. The proposed procedures would require that prospective applicants required or requesting to use the pre-filing process file draft environmental material in accordance with the provisions of Part 380 of the regulations implementing the Commission's procedures under NEPA, as described above. This would allow the Commission to review and make suggestions on how they could be improved before the filing of the application.

20. Proposed section 157.21(a)(3) would require that a prospective applicant for LNG terminal facilities and any associated jurisdictional pipeline facilities provide any necessary information for the environmental review of any pipeline or other natural gas facilities which are necessary to transport regasified LNG from the subject LNG

⁵ The CEQ's regulations are set out at 40 C.F.R. Parts 1500 through 1508 (2005).

terminal facilities to the existing natural gas pipeline infrastructure. Such facilities would include facilities not subject to the Commission's NGA jurisdiction, such as intrastate pipeline and Hinshaw pipeline facilities that will be interconnected with the LNG terminal.

21. Proposed section 157.21(b) also states that a prospective applicant approved to use the pre-filing procedures for facilities not related to LNG terminal facilities should not file an application until at least 180 days after the date that the Director issues a notice approving use of the pre-filing procedures. However, whereas a prospective applicant for LNG facilities would be precluded from filing an application before the 180-day period has ended, the proposed regulations do not preclude a prospective applicant for facilities not related to LNG facilities from filing an application within 180 days.

22. Any prospective applicant required to use the pre-filing process for LNG terminal facilities and related facilities or any prospective applicant requesting to use the pre-filing process for non-LNG related facilities would be required by proposed section 157.21(c) to first consult with the Director on the nature of the project, the content of the pre-filing request, and the status of the prospective applicant's progress toward obtaining the information required for the pre-filing request described in paragraph (d) of this section. This consultation will also include discussion of the specifications for the applicant's solicitation for prospective third-party contractors to prepare the environmental documentation for the project.

23. Proposed section 157.21(d) identifies the information that a prospective applicant's initial filing to initiate the pre-filing process must include. For LNG terminal facilities, the initial filing must include a description of the schedule desired for the project, including the expected application filing date and the desired date for Commission approval, and a description of the zoning and availability of the proposed site and marine facility location.

24. For natural gas facilities not related to LNG terminal facilities, proposed section 157.21(d) provides that a prospective applicant's initial filing must include an explanation of why the prospective applicant wants to use the process, including any critical timing considerations, the expected application filing date and the desired date for Commission approval.

25. Filings by all prospective applicants to initiate the pre-filing process would be required by proposed section 157.21(d) to include:

- a detailed description of the project that will serve as the initial discussion point for stakeholder review;
- a list of the relevant federal and state agencies in the project area with permitting requirements, and a statement indicating that those agencies are aware of the prospective applicant's intention to use the pre-filing process (including contact names and telephone numbers) and whether the agencies have agreed to participate in the process;
- a list and description of the interest of other persons and organizations who have been contacted about the project (including contact names and telephone numbers);
- a description of what work has already been done, *e.g.*, contacting stakeholders, agency consultations, project engineering, route planning, environmental and engineering contractor engagement, environmental surveys/studies, and open houses;
- proposals for at least three prospective third-party contractors from which Commission staff may make a selection;
- acknowledgement that a complete Environmental Report and complete application are required at the time of filing; and
- a description of a Public Participation Plan which identifies specific tools and actions to facilitate stakeholder communications and public information, including a project website and a single point of contact.

26. Proposed section 157.21(e) states that the pre-filing process for a prospective applicant will be deemed to have commenced on the date the Director issues a notice setting forth a finding that the prospective applicant has adequately addressed the requirements of paragraphs (a) through (d) of section 157.21. The date of such notice shall be used in determining whether the date an application is filed is at least 180 days after commencement of the pre-filing process. Proposed section 157.21(e) also provides for the Director to make determinations whether prospective modifications to an existing LNG terminal will be significant modifications involving state and local safety considerations. Such prospective modifications to existing LNG facilities will require that the prospective applicant undertake the pre-filing review process.

27. Existing section 375.308(z) describes the Director's delegated authority with respect to the collaborative pre-filing procedures in section 157.22, which this

proposed rule would remove from the regulations in view of the proposed implementation of the pre-filing procedures and review provided for in proposed new section 157.21. Therefore, the Commission is proposing to remove the existing text in paragraph (z) in section 375.208 and replace it with new text which would provide for the Director's issuance of notices to commence the pre-filing process under proposed new section 157.21, after the Director has found that a prospective applicant has adequately addressed the above-described requirements. The proposed new text in section 375.308(z) also provides for the Director to post guidance on the Commission's website to clarify the procedures and how prospective applicants can achieve compliance with the pre-filing process and regulations.

28. Proposed section 157.21(f) provides that, upon the Director's issuance of a notice commencing a prospective applicant's pre-filing process, the prospective applicant must:

- Within seven days⁶ and after consultation with Commission staff, establish and notify Commission staff of the dates and locations at which the prospective applicant will conduct open houses and meetings with stakeholders (including agencies) and Commission staff.
- Within 14 days, conclude the contract with the selected third-party contractor.
- Within 14 days, contact all stakeholders not already informed about the project.
- Within 30 days, submit a stakeholder mailing list to Commission staff.
- Within 30 days, file a draft of Resource Report 1 in accordance with § 380.12(c) and a summary of the alternatives considered or under consideration.

⁶ As provided in Rule 2007 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2007 (2005), the day on which the Director's notice is issued would be excluded in counting days for purposes of determining the date a filing is due. Further, if the due date for a filing would fall on a Saturday, Sunday, holiday, or day on which the Commission closes early due to adverse conditions, the following business day becomes the due date.

- On a monthly basis, file status reports detailing the applicant's project activities including surveys, stakeholder communications, and agency meetings.
- Be prepared to provide a description of the proposed project and to answer questions from the public at the scoping meetings held by Commission staff.
- Be prepared to attend site visits and other stakeholder and agency meetings arranged by the Commission staff, as required.
- Within 14 days of the end of the scoping comment period, respond to issues raised during scoping.
- Within 60 days of the end of the scoping comment period, file draft Resource Reports 1 through 12.
- At least 60 days prior to filing an application, file revised draft Resource Reports, if requested by Commission staff.
- At least 90 days prior to filing an application, file draft Resource Report 13 (for LNG terminal facilities).
- Certify that a Follow-on WSA will be submitted to the U. S. Coast Guard no later than the filing of an application with the Commission for LNG terminal facilities.

29. Proposed section 157.21(g) provides that Commission staff and third-party contractor involvement during the pre-filing process will be designed to fit each project and will include some or all of the following:

- Assisting the prospective applicant in developing initial information about the proposal and identifying affected parties (including landowners, agencies, and other interested parties).
- Issuing an environmental scoping notice and conducting scoping for the proposal.
- Facilitating issue identification and resolution.
- Conducting site visits, examining alternatives, meeting with agencies and stakeholders, and participating in the prospective applicant's public information meetings.

- Reviewing draft Resource Reports.
- Initiating the preparation of a preliminary EA or draft EIS, which may include cooperating agency review.

30. Paragraph (h) of proposed section 157.21 would provide that a prospective applicant using the pre-filing procedures shall comply with the procedures in section 388.112 of the regulations for the submission of documents containing CEII, as defined in section 388.113 of the regulations.

31. Once an application is accepted by the Commission, whether the environmental analysis can proceed will be highly dependent on how well the applicant responded to issues raised by Commission staff and the stakeholders during the pre-filing process described above.

III. Environmental Analysis

32. The Commission is required to prepare an EA or EIS for any action that may have a significant adverse effect on the human environment.⁷ No environmental consideration is raised by the promulgation of a rule that is procedural in nature or does not substantially change the effect of legislation or regulations being amended.⁸

33. The regulations proposed herein would establish pre-filing review procedures which are mandatory for prospective applicants for LNG terminal and any associated jurisdictional pipeline facilities and elective for prospective applicants for natural gas facilities not related to LNG terminals. In neither case do the procedures substantially change the regulatory requirements to which applications for such facilities are subject. Rather, the proposed procedures would result in certain regulatory requirements being satisfied prior to the filing of an application, as opposed to being satisfied at the time, or after the filing, of the application. The use of the procedures generally will affect the timing of the filing of applications, not when regulatory requirements are met. Further, the proposed procedures implement regulatory changes mandated by Congress in EAct 2005 for new LNG terminals.

⁷ Order No. 486, *Regulations Implementing the National Environmental Policy Act*, 52 FR 47897 (Dec. 17, 1987), FERC Stats.& Regs. Preambles 1986-1990 ¶ 30,783 (1987).

⁸ 18 C.F.R. § 380.4(a)(2)(ii) (2005).

IV. Regulatory Flexibility Act Statement

34. The Regulatory Flexibility Act of 1980 (RFA)⁹ generally requires a description and analysis of proposed regulations that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such an analysis if proposed regulations would not have such an effect. Under the industry standards used for purposes of the RFA, a natural gas pipeline company qualifies as “a small entity” if it has annual revenues of \$6 million or less.

35. Most companies regulated by the Commission do not fall within the RFA’s definition of a small entity.¹⁰ Based on the Commission's experience using the proposed pre-filing procedures, they will only be used for major construction projects. Most, if not all, LNG-related projects subject to mandatory pre-filing review would be projects costing millions of dollars. Most, if not all, non-LNG related projects for which prospective applicants will elect to use the proposed pre-filing procedures will be projects costing millions of dollars. Because of the scale and nature of projects likely to be reviewed under the pre-filing procedures, the Commission doubts that any existing or new company using the pre-filing procedures will be a small entity under the RFA's standards. Accordingly, the Commission hereby certifies that this notice's proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities.

V. Information Collection Statement

36. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting, record keeping, and public disclosure (collections of information) imposed by an agency.¹¹ Accordingly, pursuant to OMB regulations, the Commission is providing notice of its proposed information collections to OMB for review under section 3507(d) of the Paperwork Reduction Act of 1995.¹²

⁹ 5 U.S.C. §§ 601-612.

¹⁰ 5 U.S.C. § 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. § 623. Section 3 of the Small Business Act defines a “small-business concern” as a business which is independently-owned and operated and which is not dominant in its field of operation.

¹¹ 5 C.F.R. § 1320.11 (2005).

¹² 44 U.S.C. § 3507(d) (2005).

37. FERC-539, "Gas Pipeline Certificates: Import/Export Related," identifies the Commission's information collections relating to Part 153 of its regulations, which apply to facilities to import or export natural gas and for which authorization under section 3 of the NGA is necessary. If planned import or export facilities will be LNG terminal facilities, as defined in proposed section 153.2(d), the facilities will be subject to the mandatory pre-filing review required by proposed section 157.21. A prospective applicant for non-LNG related import and export facilities may choose to request approval to undertake the pre-filing procedures in proposed section 157.21.

38. FERC-537, "Gas Pipeline Certificates: Construction, Acquisition and Abandonment," identifies the Commission's information collections relating to Part 157 of its regulations, which apply to natural gas facilities for which authorization under section 7 of the NGA is required. Such facilities will be subject to the mandatory pre-filing review required by proposed section 157.21 only if they are included within the definition of LNG terminal facilities, as defined in proposed section 153.2(d) or, more likely, are necessary to transport regasified gas away from LNG terminal facilities. A prospective applicant for non-LNG related NGA section 7 facilities may choose to request approval to undertake the pre-filing procedures in proposed section 157.21.

39. FERC-577, "Gas Pipeline Certificates: Environmental Impact Statement," identifies the Commission's information collections relating to Part 380 implementing NEPA requirements relating to the construction of natural gas facilities. As proposed herein, prospective applicants using the pre-filing procedures, whether on a mandatory or voluntary basis, will be subject to the requirements of Part 380.

40. The Commission's information collections relating to this notice's proposed pre-filing procedures are described in this notice. The Commission has submitted this notice to OMB for review and clearance of the notice's information collection requirements under emergency processing procedures.¹³ OMB approval has been requested by [INSERT DATE].

41. Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondent's burden, including the use of automated information techniques.

¹³ 5 C.F.R. §1320.13 (2005).

42. The Commission has been using its current voluntary pre-filing procedures for approximately four years. Thus, the Commission has experience that it did not have when it proposed existing section 157.22 of the regulations, which this proposed rule would eliminate. Based on this experience, the Commission believes that there will be no more than 20 prospective applicants that use the proposed pre-filing review procedures on an annual basis. The Commission anticipates that this number will include no more than five prospective applicants for LNG terminal facilities. During the four years that prospective applicants have had the option of using the Commission's current voluntary pre-filing procedures, all but three prospective applicants for LNG terminal projects have elected to undertake the pre-filing procedures. Thus, the adoption of mandatory pre-filing procedures for LNG facilities is not expected to significantly increase the number of prospective LNG applicants that use the pre-filing procedures, as mandated by Congress in EPAct 2005.

43. The burden estimates for complying with additional filing requirements of this rule pursuant to the procedures in proposed new section 157.21 are set forth below. As reflected, the burden estimates are higher for a respondent/prospective applicant for LNG terminal facilities than for a respondent/prospective applicant for other natural gas facilities.

Data Collection	No. of Respondents	No. of Responses	Hours Per Response	Total Annual Hours
FERC-537	10	1	47	470
FERC-539	10	1	103	1,030
FERC-577	20	1	1,402	28,040
Totals				29,540

From these burden estimates must be subtracted the original data collection requirements in OMB's record relating to section 157.22 which this notice proposes to remove from the Commission's regulations. The numbers in OMB's record for section 157.22 are:

FERC-537: 13,230 hours

FERC-539: 270 hours

FERC-577: 13,580 hours

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When the burden estimates for proposed section 157.21 are reduced to reflect the removal of section 157.22, the net data collection estimates for this rule are:

FERC-537:	-12,760 hours
FERC-539:	760 hours
<u>FERC-577:</u>	<u>14,460 hours</u>
Total:	2,460 hours (net increase)

Total Annual Hours for Collection: 2,460 hours. For LNG terminal facilities and LNG-related pipeline facilities, these are mandatory information collection requirements. For non-LNG related natural gas facilities, these information collection requirements are voluntary but are still subject to OMB review.

Information Collection Costs: The Commission seeks comments on the cost to comply with these requirements. It has projected the average annualized cost for all respondents to be \$4,920,000 (2,460 hours x \$100.00 per hour x 20 respondents).

Title: FERC-537 "Gas Pipeline Certificates: Construction, Acquisition and Abandonment"; FERC-539, "Gas Pipeline Certificates: Import/Export Related"; FERC-577, "Gas Pipeline Certificates: Environmental Impact Statement."

Action: Proposed Information Collection

OMB Control Nos.: 1902-0060 (FERC-537); 1902-0062 (FERC-539); 1902-0128 (FERC-577). The applicant shall not be penalized for failure to respond to these collections of information unless the collections of information display valid OMB control numbers.

Respondents: Business or other for profit.

Frequency of Responses: One-time implementation.

Necessity of Information: On August 8, 2005, Congress enacted EAct 2005. Section 311(d) of EAct 2005 amends the NGA to insert a new section, section 3A, which requires that the Commission shall promulgate regulations on the pre-filing process for LNG terminals within 60 days from enactment of EAct 2005. Congress and the Commission consider the promulgation of these regulations to be a matter of critical importance to the state and local safety concerns regarding the construction and development of LNG terminals. The Commission must issue a final rule by October 7, 2005. The Commission seeks emergency processing of this proposed information collection because the use of normal clearance procedures is reasonably likely to cause a statutory deadline to be missed. The proposed rule revises the requirements

contained in 18 CFR Parts 157 and 153 to add a requirement that applicants for authorization to construct LNG terminals must comply with a pre-filing process and that such process must commence at least 6 months prior to the filing of any application with the Commission for authorization to construct such facilities.

Internal Review: The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information requirements. The Commission's Office of Energy Projects will review the data included in the application to determine whether the proposed facilities are in the public interest as well as for general industry oversight. This determination involves, among other things, an examination of adequacy of design, cost, reliability, redundancy, safety and environmental acceptability of the proposed facilities. These requirements conform to the Commission's plan for efficient information collection, communication and management within the natural gas industry.

44. Interested person may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426 (Attention: Michael Miller, Office of the Executive Director, 202-502-8415, fax: 202-273-0873, e-mail: michael.miller@ferc.gov).

45. For submitting comments concerning the collection of information and the associated burden estimate(s) including suggestions for reducing this burden, please send your comments to the contact listed above and to the Office of Management and Budget, Room 10202 NEOB, 725 17th Street, N.W., Washington, D.C. 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission, 202-395-4650, fax: 202-395-7285).

VI. Public Comment And Expedited Procedures

46. EPCRA 2005 mandates that the Commission promulgate regulations implementing the pre-filing process within 60 days of the date of its enactment. Therefore, the Commission intends to promulgate final regulations by October 7, 2005. To that end, public comments on this notice are due on September 14, 2005.

47. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. The Commission will carefully weigh and consider all public comments received.

48. Comments must refer to Docket No. RM05-31 and must include the commenters' names, the organization they represent, if applicable, and their address. Comments may be filed either in electronic or paper format.

49. Comments may be filed electronically via the eFiling link on the Commission's web site at <http://www.ferc.gov>. The Commission accepts most standard word processing formats and commenters may attach additional files with supporting information in certain other file formats. Commenters filing electronically do not need to make a paper filing. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street N.E., Washington, DC, 20426.

50. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VII. Document Availability

51. In addition to publishing the full text of this document in the Federal Register, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (<http://www.ferc.gov>) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, N.E., Room 2A, Washington D.C. 20426.

52. From FERC's Home Page on the Internet, this information is available in the Commission's document management system, eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

53. User assistance is available for eLibrary and the FERC's website during normal business hours. For assistance, please contact FERC Online Support at 1-866-208-3676 (toll free) or 202-502-6652 (e-mail at FERCOnlineSupport@FERC.gov), or the Public Reference Room at 202-502-8371, TTY (202)502-8659 (e-mail at public.referenceroom@ferc.gov).

Docket No. RM05-31-000

18

List of subjects in 18 CFR Part 157: Administrative practice and procedure; Natural gas; Reporting and recordkeeping requirements

By direction of the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

In consideration of the foregoing, the Commission proposes to amend Parts 153, 157 and 375 of Chapter I, Title 18, Code of Federal Regulations, as follows:

PART 153 – APPLICATIONS FOR AUTHORIZATION TO CONSTRUCT, OPERATE, OR MODIFY FACILITIES USED FOR THE EXPORT OR IMPORT OF NATURAL GAS

1. The authority citation for Part 153 continues to read as follows:

Authority: 15 U.S.C. 717b, 717o; E.O. 10485, 3 CFR, 1949-1953 Comp., p. 970, as amended by E.O. 12038, 3 CFR, 1978 Comp., p. 136, DOE Delegation Order No. 0204-112, 49 FR 6684 (February 22, 1984).

2. In § 153.2, a new paragraph (d) is added, to read as follows:

§ 153.2 Definitions.

* * * * *

(d) LNG Terminal means all natural gas facilities located onshore or in state waters that are used to receive, unload, load, store, transport, gasify, liquefy, or process natural gas that is imported to the United States from a foreign country, exported to a foreign country from the United States, or transported in interstate commerce by a waterborne vessel, but does not include:

- (1) Waterborne vessels used to deliver natural gas to or from any such facility; or
 (2) Any pipeline or storage facility subject to the jurisdiction of the Commission under section 7 of the Natural Gas Act.

3. In § 153.6, a new paragraph (c) is added, to read as follows:

§ 153.6 Time of filing.

* * * * *

(c) When a prospective applicant for authorization for LNG terminal facilities, associated jurisdictional natural gas facilities or modifications to existing LNG terminal facilities is required by § 157.21(a) to comply with that section's pre-filing procedures, no application for such authorization may be made before 180 days after

the date of issuance of the notice by the Director of the Office of Energy Projects, as provided in § 157.21(e), of the commencement of the prospective applicant's pre-filing process under § 157.21.

4. Section 153.12 is removed in its entirety.

PART 157 - APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

5. The authority citation for Part 157 continues to read as follows:

AUTHORITY: 15 U.S.C. §§ 717 – 717w; 3301-3432; 42 U.S.C. 7101-7352.

6. At the end of § 157.1, a new paragraph is added, to read as follows:

§ Definitions.

* * * * *

For the purposes of § 157.21 of this Part, *Director* means the Director of the Commission's Office of Energy Projects.

7. Section 157.21 is added, to read as follows:

§ 157.21 Pre-filing procedures and review process for LNG terminal facilities and other natural gas facilities prior to filing of applications.

(a) LNG terminal facilities and associated jurisdictional pipeline facilities. A prospective applicant for authorization to site, construct and operate facilities included within the definition of "LNG terminal," as defined in § 153.2(d), and any prospective applicant for associated jurisdictional pipeline facilities must comply with this section's pre-filing procedures and review process. These mandatory pre-filing procedures also shall apply when the Director finds in accordance with paragraph (e)(2) of this section that prospective modifications to an existing LNG terminal are significant modifications that involve state and local safety considerations.

When a prospective applicant is required by this paragraph to comply with this section's pre-filing procedures:

(1) The prospective applicant must make a filing containing the material identified in paragraph (d) of this section and concurrently file a Letter of Intent and a Preliminary Waterway Suitability Assessment (WSA) with the U. S. Coast Guard. Information concerning the documents to be filed with the Coast Guard may be found in the U. S. Coast Guard Navigation and Vessel Inspection Circular No. 05-05, dated June 14, 2005.

(2) An application:

(i) Shall not be filed until at least 180 days after the date that the Director issues notice pursuant to paragraph (e) of this section of the commencement of the prospective applicant's pre-filing process; and

(ii) Shall contain all the information specified by the Commission staff after reviewing the draft materials filed by the prospective applicant during the pre-filing process, including required environmental material in accordance with the provisions of Part 380 of this chapter, "Regulations Implementing the National Environmental Policy Act."

(3) The prospective applicant must provide sufficient information for the pre-filing review of any pipeline or other natural gas facilities, including facilities not subject the Commission's Natural Gas Act jurisdiction, which are necessary to transport regasified LNG from the subject LNG terminal facilities to the existing natural gas pipeline infrastructure.

(b) Other natural gas facilities. When a prospective applicant for authorization for natural gas facilities is not required by paragraph (a) of this section to comply with this section's pre-filing procedures, the prospective applicant may file a request seeking approval to use the pre-filing procedures.

(1) A request to use the pre-filing procedures must contain the material identified in paragraph (d) of this section; and

(2) If a prospective applicant for non-LNG terminal facilities is approved to use this section's pre-filing procedures:

(i) The application will normally not be filed until at least 180 days after the date that the Director issues notice pursuant to paragraph (e) of this section approving the prospective applicant's request to use the pre-filing procedures under this section and commencing the prospective applicant's pre-filing process. However, a prospective

applicant approved by the Director pursuant to paragraph (e)(2) of this section to undertake the pre-filing process is not prohibited from filing an application at an earlier date, if necessary; and

(ii) The application shall contain all the information specified by the Commission staff after reviewing the draft materials filed by the prospective applicant during the pre-filing process, including required environmental material in accordance with the provisions of Part 380 of this chapter, "Regulations Implementing the National Environmental Policy Act."

(c) Initial consultation. A prospective applicant required or requesting to use the pre-filing process must first consult with the Director on the nature of the project, the content of the pre-filing request, and the status of the prospective applicant's progress toward obtaining the information required for the pre-filing request described in paragraph (d) of this section. This consultation will also include discussion of the specifications for the applicant's solicitation for prospective third-party contractors to prepare the environmental documentation for the project.

(d) Contents of the initial filing. A prospective applicant's initial filing pursuant to paragraph (a)(1) for LNG terminal facilities and associated jurisdictional pipeline facilities or paragraph (b)(1) for other natural gas facilities shall include the following information:

(1) A description of the schedule desired for the project including the expected application filing date and the desired date for Commission approval.

(2) For LNG terminal facilities, a description of the zoning and availability of the proposed site and marine facility location.

(3) For natural gas facilities other than LNG terminal facilities and associated jurisdictional facilities, an explanation of why the prospective applicant is requesting to use the pre-filing process under this section.

(4) A detailed description of the project that will serve as the initial discussion point for stakeholder review.

(5) A list of the relevant federal and state agencies in the project area with permitting requirements, and a statement indicating that those agencies are aware of the prospective applicant's intention to use the pre-filing process (including contact names and telephone numbers), and whether the agencies have agreed to participate in the process.

(6) A list and description of the interest of other persons and organizations who have been contacted about the project (including contact names and telephone numbers).

(7) A description of what work has already been done, *e.g.*, contacting stakeholders, agency consultations, project engineering, route planning, environmental and engineering contractor engagement, environmental surveys/studies, and open houses.

(8) Proposals for at least three prospective third-party contractors from which Commission staff may make a selection to assist in the preparation of the requisite NEPA document.

(9) Acknowledgement that a complete Environmental Report and complete application are required at the time of filing; and

(10) A description of a Public Participation Plan which identifies specific tools and actions to facilitate stakeholder communications and public information, including a project website and a single point of contact.

(e) Director's notices.

(1) When the Director finds that a prospective applicant has adequately addressed the requirements of paragraphs (a) through (d) of this section, the Director shall issue a notice of such finding. The pre-filing process shall be deemed to have commenced on the date of the Director's notice, and the date of such notice shall be used in determining whether the date an application is filed is at least 180 days after commencement of the pre-filing process.

(2) The Director shall issue a notice making a determination whether prospective modifications to an existing LNG terminal shall be subject to this section's pre-filing procedures and review process. If the Director determines that the prospective modifications are significant modifications that involve state and local safety considerations, the Director's notice will state that the pre-filing procedures shall apply, and the pre-filing process shall be deemed to have commenced on the date of the Director's notice in determining whether the date an application is filed is at least 180 days after commencement of the pre-filing process.

(f) Upon the Director's issuance of a notice commencing a prospective applicant's pre-filing process, the prospective applicant must:

- (1) Within seven days and after consultation with Commission staff, establish the dates and locations at which the prospective applicant will conduct open houses and meetings with stakeholders (including agencies) and Commission staff.
 - (2) Within 14 days, conclude the contract with the selected third-party contractor.
 - (3) Within 14 days, contact all stakeholders not already informed about the project .
 - (4) Within 30 days, submit a stakeholder mailing list to Commission staff.
 - (5) Within 30 days, file a draft of Resource Report 1, in accordance with § 380.12(c), and a summary of the alternatives considered or under consideration.
 - (6) On a monthly basis, file status reports detailing the applicant's project activities including surveys, stakeholder communications, and agency meetings.
 - (7) Be prepared to provide a description of the proposed project and to answer questions from the public at the scoping meetings held by OEP staff.
 - (8) Be prepared to attend site visits and other stakeholder and agency meetings arranged by the Commission staff, as required.
 - (9) Within 14 days of the end of the scoping comment period, respond to issues raised during scoping.
 - (10) Within 60 days of the end of the scoping comment period, file draft Resource Reports 1 through 12.
 - (11) At least 60 days prior to filing an application, file revised draft Resource Reports 1 through 12, if requested by Commission staff.
 - (12) At least 90 days prior to filing an application, file draft Resource Report 13 (for LNG terminal facilities).
 - (13) Certify that a Follow-on WSA will be submitted to the U. S. Coast Guard no later than the filing of an application with the Commission (for LNG terminal facilities).
- (g) Commission staff and third-party contractor involvement during the pre-filing process will be designed to fit each project and will include some or all of the following:

(1) Assisting the prospective applicant in developing initial information about the proposal and identifying affected parties (including landowners, agencies, and other interested parties).

(2) Issuing an environmental scoping notice and conducting such scoping for the proposal.

(3) Facilitating issue identification and resolution.

(4) Conducting site visits, examining alternatives, meeting with agencies and stakeholders, and participating in the prospective applicant's public information meetings.

(5) Reviewing draft Resource Reports.

(6) Initiating the preparation of a preliminary Environmental Assessment or Draft Environmental Impact Statement, the preparation of which may involve cooperating agency review.

(h) A prospective applicant using the pre-filing procedures of this section shall comply with the procedures in § 388.112 for the submission of documents containing critical energy infrastructure information, as defined in § 388.113.

8. Section 157.22 is removed in its entirety.

9. In § 375.308, paragraph (z) is removed and replaced with the following:

§ 375.308 Delegations to the Director of the Office of Energy Projects.

* * * * *

(z) Approve, on a case-specific basis, and make such decisions and issue guidance as may be necessary in connection with the use of the pre-filing procedures in § 157.21, " Pre-filing procedures and review process for LNG terminal facilities and other natural gas facilities prior to filing of applications."