

113 FERC ¶ 61,170
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Coordinated Processing of
NGA Section 3 and 7 Proceedings

Docket No. PL06-2-000

ORDER DELEGATING AUTHORITY

(Issued November 17, 2005)

1. Section 313 of the Energy Policy Act of 2005 (EPAAct 2005)¹ amends section 15 of the Natural Gas Act (NGA)² to provide the Commission with additional authority to ensure the expeditious processing of natural gas project proposals. The Commission anticipates initiating a rulemaking proceeding in the near future to promulgate regulations in response to the EPAAct 2005 amendments. In the interim, this order delegates to staff the authority to execute certain of the responsibilities vested with the Commission by EPAAct 2005 section 313.

Introduction

2. EPAAct 2005 section 313(c)(1) directs the Commission to establish a schedule for all federal permits, authorizations, certificates, opinions, or other approvals required for an NGA section 3 or 7 proposal.³ Section 313(b)(2) then declares that “[e]ach Federal and State agency considering an aspect of an application for Federal authorization shall cooperate with the Commission and comply with the deadlines established by the Commission.” In addition, section 313(b)(1) designates the Commission “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).⁴

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

² 15 U.S.C. § 717n (2000).

³ NGA section 3 applies to projects designed to import or export natural gas; NGA section 7 applies to projects designed to transport or sell natural gas in interstate commerce.

⁴ 42 U.S.C. §§ 4321, *et seq.* (2000).

3. Pending issuance of regulations implementing these provisions of EAct 2005, the Commission is delegating to the Director of the Office of Energy Projects (OEP) the authority to establish deadlines for all federal authorizations necessary for NGA section 3 and 7 proposals.

Background

4. Under NGA sections 3 and 7, the Commission grants or denies applications for proposed natural gas projects. The construction or operation of natural gas projects typically require additional permits, authorizations, certificates, opinions, and approvals issued by other federal agencies and by state agencies acting pursuant to delegated federal authority. Approval by the Commission to proceed with a proposal is contingent on favorable findings by these other agencies. EAct 2005 section 313(c)(1) directs the Commission to establish a schedule for all federal authorizations required with respect to an application under NGA section 3 or 7.

5. In this role, EAct 2005 section 313(c)(1)(A) compels the Commission to “ensure expeditious completion” of NGA section 3 and 7 proceedings, while section 313(c)(1)(B) directs the Commission to “comply with applicable schedules established by Federal law.” Thus, the Commission is responsible for (1) coordinating the actions of those federal and state agencies with authority to issue federal authorizations for an NGA section 3 or 7 proposal, and (2) setting deadlines for decisions on federal authorizations which will “comply with applicable schedules established by Federal law.”

6. Commission authorizations under NGA sections 3 and 7 normally trigger NEPA. NEPA 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 decisionmaking which may have an impact on man's environment.”⁵ EAct 2005 section 313(b) clarifies the Commission's role in this collective, multi-agency effort, by designating the Commission as lead agency for the purpose of NEPA compliance for NGA section 3 and 7 proposals.

Commission Response to EAct 2005 Amendments to NGA Section 15

7. As noted, the Commission anticipates initiating a rulemaking to implement the EAct 2005 section 313 amendments to NGA section 15. However, the Commission believes that the processing of section 3 and 7 project proposals filed prior to the effective date of a final rule, including proposals filed prior to the enactment of EAct 2005, may benefit by the immediate application of the additional authority conferred by EAct 2005. Therefore, by this order, the Commission delegates the authority described below to the Director of OEP.

⁵ 42 U.S.C. § 4332(2)(A) (2000).

8. The Director of OEP is granted the authority to coordinate with federal and state agencies for the purpose of scheduling the completion of the analyses and decisionmaking necessary for federal authorization of section 3 and 7 proposals. Deadlines shall be no shorter than any applicable schedules established by federal law. For example, under section 401 of the Clean Water Act (CWA),⁶ an applicant for federal authorization for any activity that may result in a discharge to navigable waters must obtain certification from the state in which the discharge originates that the discharge will comply with the CWA. The CWA provides the state up to a year to act on a request for certification. Consequently, this time frame will be recognized in any schedule that the Director of OEP may set.

9. With respect to the revisions to NGA section 15, we expect to request public comments on rules of general applicability on how best to coordinate and schedule agencies' efforts in processing requests for federal authorizations. In the meantime, the Commission expects the Director of OEP to exercise the authority delegated herein on a flexible, case-by-case basis, to section 3 and 7 proposals filed prior to the effective date of a final rule, including proposals filed prior to the enactment of EAct 2005. The Director of OEP need not intervene to establish deadlines for federal authorizations in every pending proceeding. For example, the Director of OEP may find it serves no purpose to establish deadlines in proceedings that are relatively close to completion. Agencies or parties to a proceeding that object to decisions of the Director of OEP under the authority delegated herein may request Commission review of the Director's actions.

The Commission orders:

The Commission delegates to the Director of OEP the authority provided by EAct 2005 to establish a schedule for all federal authorizations necessary for NGA section 3 and 7 proposals.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁶ 33 U.S.C. § 1341 (2000).