

**FERC NEPA  
Critical Path Study**

Prepared for The INGAA Foundation, Inc., by:  
Environmental Management & Engineering, Inc.  
437 Industrial Lane  
Birmingham, Alabama 35211

**EXECUTIVE SUMMARY**

**FERC NEPA CRITICAL PATH STUDY**

**A REPORT**

**PREPARED FOR**

**Interstate Natural Gas Association of America  
555 13th Street NW, Suite 300W  
Washington, D.C. 20004**

**PREPARED BY**

**Environmental Management & Engineering, Inc.  
437 Industrial Lane  
Birmingham, AL 35211**

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**INGAA Foundation  
Washington, DC**

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**I. General Information**

The Interstate Natural Gas Association of America (INGAA) is a primary liaison organization representing the Natural Gas Industry and, as such is closely involved in support activities relating to the Federal Energy Regulatory Commission (FERC) National Environmental Policy Act (NEPA) review/approval process. Any project that constitutes a "major federal action " is required to undertake appropriate and often exhaustive studies under NEPA in order to determine and mitigate project environmental impacts. The FERC is charged with critical review and subsequent approval of all NEPA studies relating to natural gas industry installations. This review process has been in place for a number of years and has therefore been tried and tested on a multitude of various size projects whose implementation timetable has very often been severely impacted by FERC NEPA review policies and procedures. These delays have translated into considerable additional company project expense as well as higher costs to natural gas users.

While the FERC NEPA review process ultimately results in specific project approval/disapproval determinations, the gyrations and delays that project applicants are subjected to can only be described as frustrating, expensive, and for the most part unnecessary. Since the early 1980s, the FERC has steadily increased the complexity of the review process with corresponding increases in staff positions and control. This has resulted in a double layering effect wherein the FERC environmental staff are often involved in reworking the in-field approval determinations made by NEPA required state/federal participants such as the U.S. Fish & Wildlife Service and the

State Historic Preservation Officers. Natural gas industry projects are difficult enough in themselves to implement, but when one adds the stumbling blocks presented by a heightened and often unnecessary level of FERC control, the results can be catastrophic.

With the above in mind, Environmental Management & Engineering, Inc. (EME- Attachment 1) was asked by the INGAA Foundation to undertake a study aimed at a critical review of the FERC NEPA review process in order to isolate/identify problematic areas that could be changed or eliminated in order to speed up the project review/approval process.

## II. Study Outline

In order to accomplish the above basic objectives, it was felt that input would be required from both the natural gas companies as well as the FERC and a variety of other state and federal agencies that are responsible for NEPA implementation. Select central issues for discussion were suggested as follows:

1. Develop a better, more workable definition of what constitutes a "major federal action " with the objective of suggesting a project screening system to allow "smaller " projects to be impact gauged and subsequently removed from full NEPA requirements.
2. To investigate the use of a simplified risk assessment mechanism for determining potential project environmental impacts. Implementation of such a mechanism, which has been used more and more by various federal/state agencies, would likely allow many smaller projects to be classified as not being a "major federal action ".

3. In conjunction with No. 1 above, to identify the major project review sticking points as seen by both the applicant and the agency (FERC). This information would be obtained directly from companies by scheduled INGAA Environmental Committee meetings/activities and from brief meeting/discussions with key staff members.
4. Based on the above, to develop a formal list of recommendations aimed at reducing FERC environmental staff review duplication/control and thus increasing their reliance on NEPA required state/federal participants in order to reduce project conflicts and delays. The recommendations would be supported by factual data, and designed/presented in a fashion that makes sense, is defensible, and encourages a positive response from the FERC and supporting agencies-CEQ/DOE, etc.

The activities outlined above took place in three Primary Phases: 1) Review/analysis of substantiating documentation/case law relating to the designation of projects as "major federal actions ", review/analysis of FERC charter goals and objectives as they relate to NEPA requirements, simplified risk assessment tool development, a review of CEQ NEPA implementation guidance documents particularly as they relate to FERC activities, etc.; 2) Solicitation/gathering of information to identify problematic aspects of the NEPA review process directly from natural gas companies, key FERC staff members and a variety of other state/federal agencies; and 3) Organizing and structuring a list of recommendations in a report format approved by INGAA member companies and submitted to the FERC and to the CEQ/DOE and other key agencies/groups from which support would be requested.

The large amount of information generated as a result of the above approach was organized into a reference document that occupies thirteen (13) volumes and probably represents the most comprehensive NEPA reference document ever compiled. An outline and brief description of the report format is as follows:

## FERC NEPA CRITICAL PATH STUDY REPORT OUTLINE

- I. General Project Information -- Overall discussion of the project and what it proposes to accomplish.
  
- II. The National Environment Policy Act (NEPA)
  - A. NEPA Legislative History -- background information/discussion on the evolution of NEPA and its operational thrust.
  
  - B. NEPA Regulatory Structure -- indepth discussion of NEPA and its regulatory structure with concentration on the definition of a "major federal action" and "significant environmental impact."
  
  - C. The NEPA Review Process -- general discussion of the NEPA permitting mechanism and the federal/state agencies involved.
  
- III. Federal/State Implementation of NEPA
  - A. General Agency Discussion -- basic discussion of NEPA Oversight and Federal/State Agency participation.
  
  - B. Specific Federal/State Implementation of NEPA -- indepth discussion of specific federal/state agencies treat NEPA implementation, including telephone contacts/interviews and review/comparisons of various inhouse and regulatory guidelines used.
  
  - C. Federal Energy Regulatory Commission
    - 1. FERC Structure and Operational Parameters -- a brief discussion of the general FERC structure as well as specific comments relating to the Environmental Evaluation Branch (EEB).
  
    - 2. FERC Implementation of NEPA -- an indepth discussion of NEPA implementation including regulatory mandates/interpretations as well as actual interactive mechanisms of the EEB.

#### IV. Natural Gas Industry NEPA Interaction

- A. Natural Gas Industry Project Development and Implementation -- a discussion of internal and external procedures involved in development and implementation of a natural gas industry project.
- B. Natural Gas Industry Project Permitting Process -- an indepth discussion of project permitting procedures including timing considerations and related FERC NEPA implementation problems.

#### V. NEPA Implementation Process Discussion

- A. Overview of Problem Areas -- a brief recap of the major project FERC NEPA implementation problem areas.
- B. NEPA Implementation Process Recommendations -- a detailed discussion of recommendations designed to ease the project permitting/review definition of a "major federal action " and what constitutes a "significant environmental impact ", proposal of a simplified risk assessment mechanism for determining potential environmental impacts, discussion relating to a workable project screening system to allow smaller projects to be impact gauged and subsequently removed from full NEPA requirements.

- VI. Recommendations -- specific discussions/recommendations for FERC consideration aimed at reducing EEB review duplication in project review procedures, etc.

### III. Discussion of Report Highlights

#### A. Background

Council on Environmental Quality NEPA regulations specify that federal agencies make Environmental Impact Statement (EIS) review documents and any comments and response a part of the record in formal rulemaking and adjudicatory proceedings. The review documents and responses must

accompany the project proposal through the federal agency 's review process. The agency must consider a full range of available practicable alternatives, including ones evaluated in the NEPA process, in making its decision on a project proposal. Most federal agencies have promulgated NEPA regulations which address how the NEPA review process is to be incorporated into their programs. As set out in the CEQ NEPA regulations, federal agencies in preparing EISs are encouraged to use programmatic actions and to tier NEPA project review to reduce paperwork and delay. Federal agencies are further required to integrate the NEPA review process in the early stage of project planning. In the preparation of an EIS, the scoping process provides for identification and consideration of environmental issues and alternatives early in the review process.

The agency carrying out a federal action is basically responsible for complying with NEPA requirements. In some cases, more than one federal agency may be involved in a project. In such cases, a lead agency is designated to oversee preparation of the EIS. State or local agencies may act as joint lead agencies along with federal agencies. If a federal agency has special expertise with respect to an environmental issue it has the responsibility to assist the lead agency. Such assistance would include early participation in the NEPA process, participation in the scoping process, development of information and preparation of environmental analyses, including portions of the EIS in which the cooperating agency may have special expertise, and the provision of in-house staff support in order to enhance the lead agency 's interdisciplinary capabilities.

Federal agencies may refer interagency disagreements to CEQ concerning proposed federal actions that might cause unsatisfactory environmental effects. The actual oversight role of a referral agency in the NEPA review process depends on the agency 's expertise and relationship to the proposed project.



When it accepts a referral, CEQ 's role is generally to develop findings and recommendations within a specified time, consistent with the policy goals of Section 101 of NEPA. A referring agency must advise the lead agency of its intention to refer the matter to CEQ and to notify CEQ. In advising the lead agency, the referring agency will address the reasons for the referral and recommendations for remedying the situation. If the lead agency does not respond satisfactorily to the referral agency, the matter is forwarded to CEQ, which may take several actions to resolve the situation, including discussing the matter with both agencies, holding public meetings to obtain additional information, determining that the issue is not of national importance and the agencies should continue with their decision making, publishing findings and recommendations, and when appropriate, submitting the referral and its recommendations to the president for action.

In an effort to compare FERC 's review process to what is outlined in CEQ regulations and implemented by other federal, state and local agencies, the study contacted 47 such agencies. They were selected on the basis of relevance to pipeline assessment permitting and review. The agencies were contacted by mail and asked to respond with any information they might have concerning the definition of "major federal action " and "significant environmental impact." They were also asked to send any inhouse information, programs or manuals they used to provide assistance in making determinations of major federal action/significant environmental impact (MFA/SEI). The correspondence was followed up with phone calls to all the agencies to discuss with relevant officials their own or departmental definitions of MFA/SEI and to ask if they had any established risk assessment mechanisms, documented or not. They were again requested to forward any information they have on making determination of NEPA compliance. The telephone contact information was combined with correspondence to piece together each agency 's methods of determining MFA/SEI, to compile a list

of the agency 's categorical exclusions, and to determine its risk/impact assessment procedures.

The information gained from correspondence and documents received from the agencies, along with follow-up telephone conversations, was compiled and compared to FERC 's definitions of MFA/SEI, its risk assessment mechanisms and categorical exclusions. This analysis revealed that the FERC 's process deviated significantly from that recommended by CEQ, and from the process used by most of the other agencies.

In general, pipeline companies have not experienced the problems with other federal, state and local agencies that they have encountered with FERC. The exceptions have often been due to intervention by FERC, even after other agencies with primary responsibility had made reasonable approvals and disapprovals regarding pipeline project plans.

Although FERC did for the most part adopt the CEQ regulations, which place emphasis on solving problems as quickly as possible and with a little paperwork and expenditure of unnecessary time and resources as practical, FERC in practice has continued on a path of increased regulation, more paperwork, more unnecessary delay and much more expense and commitment of human resources of pipeline companies to carry on their business. While the CEQ requested that agencies, in their implementation of NEPA, concentrate on issues that are truly significant, FERC has required detailed knowledge of issues of remote importance.

**B. Specific Federal/State Agency Contacts**

Some forty-seven (47) agencies selected to be contacted about information having to do with NEPA compliance were drawn from the general list of

agencies found in FR 38 August 1, 1973 pp 20557-20562. They were selected on the basis of relevance to pipeline assessment permitting and review. The information gained from correspondence and documents received from the agency along with the telephone conversation was compiled and compared to FERC 's definitions of "Major Federal Action " and "Significant Environmental Impact ", their risk assessment mechanisms, and categorical exclusions. The results for this exercise were then used to develop recommendations for a consistent method of determining what constitutes a major federal action, more specific and uniform criteria for determining significance, and more uniform procedures for use in risk/impact assessments.

The following is a select list of some of the agencies contacted and from which information was received.

1. Advisory Council On Historic Preservation, Washington, D.C.
2. Alabama Historical Commission, Montgomery, AL
3. U.S. Coast Guard, Environmental Section, Washington, D.C.
4. U.S. Army Corps of Engineers, Environmental Branch, Civil Engineering Section, Washington, D.C.
5. U.S. Army Corps of Engineers, Regulatory Branch, Mobile, AL
6. Department of Energy, Office of NEPA Oversight, Washington, D.C.
7. Department of Environmental Regulation, NW District, State of Florida, Pensacola, FL
8. Environmental Protection Agency, Federal Assistance Section, FERC Liaison, Washington, D.C.
9. Environmental Protection Agency, Region IV, Atlanta, GA
10. Department of Interior, Office of Environmental Affairs, Washington, D.C.
11. U.S. Fish & Wildlife Services, Washington, D.C.

12. U.S. Fish & Wildlife Services, Regional Office, Newton Corner, MA
13. Bureau of Land Management, Alexandria, VA
14. Soil Conservation Service, Washington, D.C.
15. Soil Conservation Service, Auburn, AL

C. Discussion of What Constitutes a "Major Federal Action" and a "Significant Environmental Impact"

Since a determination of what constitutes a MFA and a SEI are pivotal decision points in EA/EIS determination, a considerable amount of report time was spent studying the issue.

In analyzing a project to determine whether it is a *"Major Federal Action significantly"*, three definite questions must be addressed, that is, *"federal action"*, *"major"*, and *"significant impact"*.

1. "Federal" Action

Section 102(2) of NEPA requires that *"to the fullest extent possible"* a detailed environmental impact statement shall be prepared on every recommendation and report on proposals for legislation and other *"major federal actions significantly affecting the quality of the human environment."*

Interpretation of the phrase *"major federal actions significantly affecting the environment"* involves mixed questions of law and fact. Most of the judicial opinions on NEPA have decided that the challenged actions were federal, major, and would have a significant effect on the human environment. Very few of the decisions discuss in detail the criteria

used to reach this determination. In fact, it is not entirely clear from the decisions whether the judiciary has treated the phrase as having created one, two, or three tests.

With regard to the requirement that the action be *"federal"* before NEPA applies, the courts generally have considered even the slightest federal connection with the action to be sufficient. This fact is borne out by the fairly small number of cases which have been dismissed because the proposed action was found not to be a *"federal"* action.

CEQ regulations do not expressly define Federal actions but do indicate the categories in which Federal actions tend to fall. These categories include:

1. The adoption of official policies, such as rules and regulations.
2. The adoption of *"formal plans ...which guide or prescribe alternative uses of federal resources, upon which future agency actions will be based."*
3. The adoption of *"programs, such as a group of concerted actions to implement a specific policy or plan 'or' allocating agency resources to implement"* a statutory program or executive directive.
4. The approval of specific projects such as *"actions approved by permit or other regulatory decision as well as federal and federally assisted activities"*.

The third and fourth categories would appear to include FERC NEPA oversight of natural gas industry projects. However, judgments relating to whether an action is *"federal"* could possibly be used to control/reduce FERC policy of including non-jurisdictional aspects of

jurisdictional projects in the NEPA review process, and also for eliminating FERC NEPA review application to straight non-jurisdictional projects.

Earlier CEQ guidelines in force from 1973-1978, which influenced many of the court decisions on the federal action problem were more detailed. These guidelines more specifically addressed the problem of actions at the federal level which applied to nonfederal entities. The early regulations defined "*actions*" to include "*new and continuing projects and program activities ... supported in whole or in part through federal contracts, grants, subsidies, loans on other forms of funding assistance ... or involving a federal lease, permit, license, certificate on other entitlement for use.*"

2. "Major" Action

It is much more difficult to separate "*major*" actions from "*actions significantly affecting the human environment*" than it is to separate "*federal actions*" from the other criteria. Logically, it is possible for a federal action to be a major action, but not one which significantly affects the human environment. Likewise, it presumably is possible for an action of the Federal Government to significantly affect the environment, but not be a major action. This last possibility seems less likely than the first, and, more likely than not, if the actions had a significant effect on the environment, it would be considered "*major*".

As was the case with the question of whether an action is "*federal*", there has not been much controversy over whether a proposed federal action is a "*major action significantly affecting the human environment.*"

The courts have used the terms broadly, and they have ruled out the applicability of NEPA on these grounds in only a very few cases.

With regard to *"significant effects"*, in *Citizens Organized to Defend the Environment vs. Volpe* the court said that *"a federal action"* significantly affecting the quality of the human environment is one that has an important or meaningful effect directly or indirectly upon any of the many facets of man 's environment. On the subject of *"significant effects"*, the court went beyond its original definition in stating that *"the phrase must be broadly construed to give effect to the purposes of the NEPA. A ripple begun in one small corner of an environment may become a wave threatening the quality of the total environment. Although the thread may appear fragile, if the actual environmental impact is significant, it must be considered."*

3. "Significant " Impact

Background documents discussing the early stages of CEQ NEPA activities clearly indicate that the Council recognized the importance as well as the interpretation problems associated with the term *"significant impact"*. The CEQ Guidelines of May 11, 1970 state that *"Section 101(b) of NEPA indicates the broad range of aspects of the environment to be surveyed in any assessment of "significant impact"*. The Act also indicates that *"adverse significant effects"* include those that *degrade the quality of the environment, curtail the range of beneficial uses of the environment or serve short-term environmental goals; to the disadvantage of long-term goals. Significant effects can also include actions which may have both beneficial and detrimental effects, even if on balance, the agency believes that the effect will be beneficial.*

*Significant adverse effects on the quality of the human environment includes both those that directly affect human beings and those that indirectly effect human beings through adverse effects on the environment."*

Obviously, the above is a very broad approach to the determination of whether a project is a "significant impact" on the human environment. In practicality, the mechanism of making a decision as to whether a significant impact has or will occur as a result of a proposed project, and an EIS required, is called a "threshold determination". When an action is first proposed and an agency has determined that it is "major", there are three possible courses of action under NEPA: 1) the agency can make a categorical exclusion determination if the proposed action does not individually or cumulatively have a significant effect on the human environment and there is an appropriate exclusion listed in the agency's regulations; 2) the agency can prepare an environmental assessment (EA) to determine whether a finding of no significant impact (FONSI) can be made or whether an EIS must be prepared; or, 3) the agency can prepare an EIS in accordance with the requirements of Section 102(2) of NEPA, the CEQ regulations, and any of its own regulations.

The determination of whether a "significant impact" will occur as a result of the proposed action, and therefore whether a detailed EIS would be prepared, is accomplished through the EA. The preparation of an EA is not addressed in the statutory language of NEPA but rather in the CEQ's implementing regulations. The EA can subject an agency to danger of litigation since an EA is usually prepared with an agency's often limited internal resources, but must demonstrate



that the agency took a "hard look" at the potential environmental effects of an action before determining that a FONSI can be made. The United States Court of Appeals for the District of Columbia Circuit first formulated the standard of review for this threshold determination in *Maryland - National Capitol Park and Planning Commission v. U.S. Postal Services*, 487F.2d1029, 1040(D.C. Cir. 1973). Other jurisdictions have adopted the approach. That standard is: 1) the agency must have accurately identified relevant environmental concerns; 2) once the agency has identified the problem, it must have taken a "hard look" at the problem in preparing the environmental assessment; 3) if a finding of no significant impact is made the agency must be able to make a convincing case for its findings; and 4) if the agency does find an impact of true significance, preparation of an EIS can only be avoided if the agency finds that mitigation measures in the project sufficiently reduce the impact to a minimum.

Where an EIS is questioned on the basis of adequacy, an EA may be questioned both on whether after taking a "hard look", it identified any potential environmental concerns, and if it did, whether it made a convincing argument that these concerns would not be significant.

Therefore, an agency must carefully review potential environmental impacts resulting from a proposal action and be able to justify its decision for a FONSI or an EIS based on the "significance" of the impact. The EA then is a concise public document briefly providing the evidence and analysis necessary to make a threshold determination.

D. Summary of Agency Treatment of Major Federal Action/ Significant Environmental Impact

Each of the forty-seven (47) agencies surveyed was evaluated for its interpretations of Major Federal Action and Significant Environmental Impact (MFA/SEI). Information was gleaned from correspondence received from them and from numerous telephone conversations. Special importance was placed on criteria used for determining "*significant*" when evaluating impacts of projects. Almost all the agencies referred to CEQ regulations' definition in some fashion with the majority interviewed admitting that the CEQ definitions were vague and not easily interpreted. Several agency offices did have critical factors and special areas of consideration to be evaluated in determining project effects. Almost all could give examples of "*significant*" but rarely did one have any criteria or clear definitions spelled out. All agencies dealt with in this discussion except for Advisory Council on Historic Preservation (ACHP) and State Historic Preservation Office (SHPO) rely on a subjective approach with their personnel exercising "*professional*" judgement when determining "*significant*". Eighteen (18) were selected to represent those that had reasonably clear criteria and/or considerations for MFA/SEI and are presented in Volume I of the report.

E. Environmental Risk/Impact Assessment

One of the main objectives of this report was to pull together meaningful mechanisms for determining environmental risk/impact and to make recommendations on methods to quantify project impacts to the environment. In order to pull together meaningful mechanisms for environmental risk/impact assessment, approximately 200 documents relating to impact assessment from a wide variety of sources were reviewed. These documents consisted of Draft and Final Environmental Impact Statements,

Environmental Assessments, Procedures and Guidelines for Environmental Assessments and Impact Statements, Procedures for Ecological Studies, etc. Many of the documents reviewed lacked specific criteria needed to determine and quantify actual environmental impacts. Some of the documents had specific definitions for levels of impacts along with relative definitions of impacts. In reviewing the approximately 200 documents it was found that most of the approaches to environmental risk/impact assessment relied on past experiences and the subjective judgement of the reviewer or team of reviewers (safety in numbers).

Several of the documents reviewed did use a Matrix of Objective type approach to gauging environmental risk/impacts in which a set of numerical weights are applied to specific categories of risk/impacts along with concrete definitions for measurement of such. While this approach is certainly not novel, as it has been around for a number of years, it is not used by agencies as frequently as it should be, probably due to the fact that it is intrinsically easier for agencies to use a "*professional*" judgement approach. Many agencies may also feel that "*professional*" judgement, however subjective, is difficult to question and therefore more defensible. In any event, use of Matrix of Objective is recognized scientific approval, which if adopted by agencies would provide a uniform system that would take the guesswork out of risk/impact assessment, particularly in the pivotal EA phase where an inappropriate determination of "*significance*" will mandate that an exterior EIS be prepared. Considering the fact that natural gas industry projects are fairly restrictive in terms of project types, that is, involving linear pipeline or compressor station installations, often on existing and dedicated right-of-way, a Matrix of Objective approval should prove to be workable in many if not all instances. Immense savings in time and consumer dollars could result and be multiplied by using the CEQ tiering and interagency cooperation concepts and mandates.

In this light, some twenty-one (21) documents were selected to provide specific information and examples on environmental risk/impact assessment mechanisms employed. A brief critique of each document and the risk/impact assessments used therein was provided, as well as a full discussion and outline of matrix of objective approach.

## VI. Recommendations

The FERC NEPA Critical Path Study is aimed at a constructive review of the FERC NEPA review process in order to isolate and identify problematic areas that could be changed, improved, or eliminated in order to speed up the project review/approval process. During the course of the study, a tremendous amount of information was gathered for inclusion in the final report. Much of this data is oriented directly or indirectly towards elucidation of problematic areas particularly in regard to agency interactions and FERC mandates and NEPA/CEQ interpretations. As a result of categorizing and surveying the above information and reviewing natural gas pipeline responses to INGAA, a series of suggested recommendations was formulated. For convenience the suggested recommendations are divided into five general categories: 1) agency coordination/process; 2) non-jurisdictional areas; 3) EA, EIS, FERC processes; 4) regulatory aspects; and 5) categorical exclusions.

It should be noted that the following discussions by no means are intended nor presumed to include all potential recommendations that could be made, but rather a reasonably good list of pertinent areas of concern relating to certification, procedural, timing and regulatory problems.

A. Agency Coordination/Processes

1. CEQ 1501.16 - Cooperating agencies should be expanded to permit such agencies to issue final decisions conditioned on the development, at a later date, of a FEIS by the lead agency. Such a procedure could be codified and would import a degree of regulatory certainty to projects at the earliest possible time.
2. Continuance and increased usage of the "lead agency" concept. Failure to adopt and/or actively pursue the "lead agency" concept has led to duplication of effort, increased paperwork and delay of results in some federal agency nonacceptance of the environmental work of other federal agencies.
3. Integration of environmental documents between agencies to avoid separate analyses which generally do not track with each other. In situations where several agencies have overlapping jurisdiction, an applicant may be required to provide several responses, each with a different format and implementing regulations.
4. More uniformity in agency to agency implementation of NEPA. This goes beyond simple adoption of CEQ guidelines and would require a unified effort probably spearheaded by CEQ.
5. Reduce duplication with state and local procedures especially in states with legal requirements similar to NEPA. Recommend that the lead federal agency consult with any state agencies requiring an EIS prior to drafting the federal agency EIS.

6. Eliminate interagency (FERC, CEQ, etc.) conflict and rivalry and emphasize coordination between the separate agency environmental staffs. When a project involves several agencies, as is frequently the case at FERC, so many experts are working on the project that conflicts are inevitable. In our opinion, the functions prescribed in NEPA would be more efficiently carried out by one lead agency, provided that agency accepts the permits, studies, and approvals of coordinating agencies. If that cannot be done, once any agency involved with a project determines that the project has no environmental impact, that decision should be honored by all other agencies involved.
7. Encourage agencies (FERC, CEQ, etc.) to reply immediately to reports filed by the project sponsor whether the report is complete or not complete. If incomplete - determine/ identify existing deficiencies quickly so they can be addressed.
8. Consider establishing a central computerized information system at CEQ into which state/federal agency and industry environmental data could be input and drawn upon by all parties under CEQ regulatory mandates. Input and catalog file data from FERC electronics data system and require all federal agencies to use it as a long term goal.
9. The FERC should acknowledge the review responsibility and professional expertise of the state or other federal agency as mandated by NEPA/CEQ law/regulations and rely on those review programs and the impact determinations developed by them.

10. FERC should keep project timing considerations more closely attuned to certificate issuance to insure that the "major" field/agency contact effort required does not take place out of step with certificate issuance.

**B. Non-Jurisdictional Areas**

1. Cessation of FERC intervention/inclusion of non-jurisdictional projects under the FERC NEPA compliance umbrella. Removal of non-jurisdictional aspects of NEPA regulated projects from FERC NEPA requirements.
2. Improved permit processing coordination - No certification should be delayed for which the FERC does not have jurisdiction or statutory requirement; limit interventions and protests - FERC should not adjudicate claims beyond its jurisdiction; delegate to state or federal agencies whenever possible.
3. Reduce or eliminate FERC 's present interpretive control over non-jurisdictional facilities. Some of basis of FERC 's interpretation is tied to their claim as an "independent" agency and that they are not subject to CEQ regulations. Current proposed House/Senate legislation may correct this misunderstanding. FERC 's review should be limited to ensuring that the applicant has taken appropriate action with the proper agency.

**C. EA, EIS/FERC Process**

1. Possible establishment of a set series of environmental certificate requirements (using a fact specific finding approach) pertaining to erosion control, hydrostatic testing, backfilling and slopes management

(i.e. mulching, etc.), seeding/revegetation including fertilizing, etc. unless changes are noted by the applicant varying from the established protocol, FERC can assume compliance as written. Some of the above

have been completed by FERC though not by the fact specific finding approach. Others remain to be done.

2. Use of scoping process - particularly for identifying controversial issues and essential for those projects involving more than one federal agency.
3. Tiering - use and expansion of tiering activities should be emphasized as a significant tool to minimize duplication and work involved in implementing NEPA.
4. EIS - emphasize local analysis instead of description. Create programmatic agreements and use existing documents to augment blocks of descriptive information where possible. Many state and federal environmental agencies have area/regional lists of species and habitat descriptions and other data banks/resources that can be used in whole or in part by reference.
5. EIS cost reduction - use of tiering, incorporation by reference, adoption of EIS 's prepared by other agencies, etc. would have to be adopted by all agencies to be effective. Many federal agencies are unwilling to adopt an EIS prepared by a state agency (or vice versa) or to accept environmental analysis prepared by a qualified consultant hired by the applicant. Need to ensure that the EIS team includes persons with actual experience and expertise in the type of projects



proposed, including the technology for developing, constructing and operating the project.

6. Develop active project cost control measures and accountability for the EIS preparation team.
7. Limit/control development and timing aspects of "*reasonable alternatives*" to those necessary to avoid or minimize adverse impacts or enhance the quality of the human environment and avoid generating alternatives for their own sake. Alternatives considered in the applicants' selective technical screening process should be considered and incorporated when appropriate.
8. The EIS should contain only necessary descriptions and a good analytical discussion.
9. Eliminate delays in EIS preparation.
10. Establish specific time limits for FERC to complete an EA, EIS.
11. Use of a "*Matrix of Objective Standard*" covering the different types of certificate filings which if complied with will streamline the certification process. Use for Categorical Exclusions, Blanket Certificates, Prior Notice and Minor and Major Projects (dollar limit determined).
12. General EIS Suggestions - Establish guidelines based on the appropriate level of environmental review required for the project. Recognize the distinction between EA and EIS. Use generic

environmental reports, assessments, impact statements. Implement least intrusive standard mitigation measures for all whenever possible.

13. A conditional certificate separating environmental from non-environmental factors should be institutionalized. Establish a phased environmental process by issuing a conditional certificate after completion of an EA subject to compliance with mitigation measures included in the final EIS.
14. For projects not entitled to a categorical exclusion to EA and if FERC concludes all potential adverse environmental impacts mitigatable, then issue certificate on FONSI, but if a FONSI is not possible then issue the certificate based on the EIS.
15. Process non-environmentally involved certificate application on a separate, expedited track or offer as expanded categorical exclusion.
16. Require final EIS to address only those changes to standard mitigation measures.
17. A planned phasing approach of EIS data that allows the FERC Staff to undertake and complete the required environmental review process while providing some recognition as to when the applicant can reasonably obtain the data and to not subject the applicant to speculative costs before knowing that a certificate is assured.
18. Limit pre-certificate requirements so as not to delay consideration by FERC staff and other interested parties of the non-environmental aspects of the application.

19. Develop "*reasonable*" criteria for reviewing small projects so as to avoid unnecessary and time consuming environmental work.
20. If the "*Northeast Standard*" recently adopted by FERC is to be used, it should be noticed and put out for public comment or at least reviewed from a timing perspective. This will allow industry and state and federal agencies the opportunity to assist FERC in molding the standard to something effective and acceptable to all concerned.
21. Develop some sort of initial screening mechanism to determine if the project is significant from an environmental perspective. Any number of threshold/ numerical ranking approaches exist that could be used in whole or in part on natural gas industry projects.
22. Developing complete and detailed information for the environmental spreadsheets under Order 493 prior to filing a application as required by FERC is excessive and often causes significant delays which adds to project costs and risk and inefficient use of contractor resources. An optimal timing of development/submission of environmental information should be developed generically, and adjusted as needed at the pre-filing meeting.
23. Set more specific certificate time limits such as time limits for acceptance, rejection, or additional information -- for example, 6 months for blanket projects (1 year if a major project); 6 months for unopposed projects; 60 days for the Commission to complete an EA. The 60 day clock could begin after the response to the initial staff data request. Develop an accountability system and require posting of project status, staff expertise/responsibility related to project tasks.

Allow for a *"negotiated"* time frame for those applications that are not covered by the above categories.

24. Set administrative time limits such as a maximum of 60 days from completion of *"administrative trial"* to first presentation at Commission open meeting with 60 days thereafter to draft opinion, except, 30 days to draft opinion for uncontested settlement and burden of proof if trial staff is only opposition; 90 days for rehearing orders; 30 days for most compliance filings.
25. Expand the prefiling process between FERC and the applicant by providing a project specific checklist of permits, developing consistency between FERC/applicant priorities and addressing the project environmental issues and requirements in advance.
26. Promote a more *"open access"* atmosphere for better direct communication between FERC/applicant decision makers on important project issues. This can be done by promoting direct dialogue in open meetings, delegating more decisions by FERC to lower level staff to reduce the bottleneck, improving communication (telephone or meetings) throughout the crucial environmental review process where key impact decisions are made.

D. Regulatory Aspects

1. The Abbreviated Applications [18 CFR, App B(8)] which were proposed for elimination 8/20/79 could be used by an applicant to show that a project would have no significant environmental impact and thereby the applicant could avoid having to file an ER. The Abbreviated Application regulations were not eliminated but were

moved from Appendix B to Appendix A after removal of wording which allowed the applicant discretion to disregard reporting insignificant information. This wording appears again in the RM90-1 NOPR at 380.12(a), 2, and apparently calls for a full-blown Environmental Report. A reinstatement of a modified version of the original abbreviated application that would be acceptable to FERC would likely be worth pursuing.

2. Increased emphasis/awareness of paragraph 102(2)(B) of NEPA which requires consideration of environmental matters "*along with economic and technical considerations*" and not to the exclusion of them. Perhaps a case specific analysis mechanism is needed to keep project cost/benefit in perspective.
3. Section 157.208 - Reduction of Prior Notice Requirements. Excessive requirements include submittal of a USGS topographic map indicating the location of any sensitive environmental area within one-quarter mile of project-related construction activities; Section 157.208(c)(3). The Commission also requires, in 157.208(c)(11), that the certificate holder perform a "*concise analysis*" of the relevant issues outlined in Appendix A Part 380 which is the functional equivalent of the process used in Section 7(C) filings.
4. Section 157.206(d)(2) - Some of the federal laws listed in Section 157.206(d)(2) do not apply at all to the activities authorized by the blanket certificates. As to the protection of wetlands, for example, Executive Order No. 11,990 expressly provides that the Order does not apply to "*the issuance by federal agencies of permits, licenses, or allocations to private parties for activities involving wetlands on non-federal property.*" Exec. Order No. 11,990 1(b), 45 Fed. Reg. 26,961

(1977). Likewise, other statutes listed apply only tangentially, if at all, and certainly not primarily to the activities that the blanket certificates authorize. The Wild and Scenic Rivers Act, for instance, says that it applies only to the Commission 's licensing of hydroelectric or other water resources projects under the Federal Power Act, 167 U.S.C. §1278(a) (1976). It says nothing about actions of the Commission under the NGA. Accordingly, the Commission should amend Section 157.206(d)(2) so that the lists of statutes is informational rather than prescriptive.

5. Section 157.206(d)(4) - states that "*Any transaction authorized under a blanket certificate shall not significantly impact or adversely affect a sensitive environmental area.*" There is no definition of the terms "*significant impact*" or "*adversely affect*" in the regulations. But, depending on the meaning of these terms, the Commission could deem any project that affects a "*sensitive environmental area*" to be a violation of the blanket certificate. The provision is unnecessary, because the existing environmental statutes and regulations adequately define those impacts or effects that, in the determination of Congress and the agencies having primary responsibility for environmental protection, are detrimental to the environment. Accordingly, this provision should be deleted or rewritten so that the Commission 's role is instructive rather than prescriptive.
6. Expand the self implementing procedures codified in Section 157 Subpart F to reduce to an effective level the number of projects requiring a detailed certificate application and to make other services comparable to blanket transportation services.
7. Expand self-implementing procedures such as Subpart F, part 157

blanket authorization. *"Eligible facilities"* should be all mainline facilities not requiring EIS under Part 380; all services under existing rate schedules for 100 days with prior notice treatment thereafter; prior notice abandonment of all facilities and services; eliminate revenue crediting to Account No. 191 for all self-implementing transactions; indicate the actual date for the end of the 45 day period in this notice; and issue a *"blanket"* order after the 45 day period ends without protest.

E. Categorical Exclusions

1. All gathering facilities and field gas compression facilities which could have been included in a budget authorization, but which are subject to separate applications due to the applicant 's exceeding the monetary limits of the budget certificate.
2. Replacement of pipeline facilities, and such interconnection and transmission facilities as looping existing pipeline and making additions to existing facilities that are adjacent to or within current rights-of-way.
3. Abandonment or replacement of compression facilities where no net increase in emissions will result.
4. Transportation and exchange arrangements including those entered into pursuant to Section 311(a) of the NGPA where no major facilities are proposed.
5. Such other proposals that the applicant believes will not involve a major federal action significantly affecting the quality of the human environment, and can be supported with an abbreviated report.