



July 25, 2018

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street NE
Washington, DC 20426

Re: Certification of New Interstate Natural Gas Facilities, Docket No. PL18-1-000

Dear Ms. Bose:

The Coalition for American Heritage (CAH) appreciates the opportunity to comment on Federal Energy Regulatory Commission's (FERC's) Notice of Inquiry (NOI) seeking information and stakeholder perspectives on FERC policies for certifying new interstate natural gas facilities. The Coalition for American Heritage (CAH) is an advocacy coalition that protects and advances our nation's commitment to heritage preservation. Supported by the American Cultural Resources Association, the Society for American Archaeology, the Society for Historical Archaeology, and the American Anthropological Association, the Coalition collectively represents 300,000 cultural resource management professionals, archaeologists, and anthropologists with an interest in Section 106 of the National Historic Preservation Act (NHPA) and the National Environmental Policy Act (NEPA). Many of our members have experience working with FERC on NHPA and NEPA compliance for interstate gas pipeline projects.

FERC's current certification policy has been in place nearly twenty years. With the rapid development of natural gas resources in the United States and increasing controversy over the environmental effects of this development, it is timely that FERC has decided to revisit current methods and policy. We urge you to use this opportunity to (1) incorporate historic and cultural preservation concerns into the balancing test for determining whether a project is in the public convenience and necessity and (2) adopt common-sense measures to streamline cultural resources review without undermining historic preservation law compliance. We also support the laws of the nation that identify and consider American Indian values and perspectives in the licensing process. The consideration of effects on historic properties under NHPA and NEPA can occur while still achieving efficient and timely certification of proposed natural gas facilities.

BALANCING TEST

One question posed by the NOI is whether FERC should consider changing how it weighs a proposed project's adverse environmental impacts against favorable economic benefits to determine whether the proposed project is required by the public convenience and necessity. The efforts of FERC have been historically guided by the Natural Gas Act of 1938 (NGA) and subsequent amendments, particularly NGA's intent to encourage orderly development of plentiful

supplies of natural gas at reasonable prices. But the needs of our nation when the NGA was enacted 80 years ago are greatly different than today's considerations of energy and its sources. With both solar and wind power increasingly efficient, natural gas necessity is not what it was before World War II. Similarly, our nation's understanding of what environmental effects there may be from a project has expanded to include resources related to our country's past. Although FERC currently incorporates environmental considerations into the balancing test, it does not consider impacts to historic and cultural resources that may have value to stakeholders, descendant communities, and economic benefits such as tourism. This oversight should be corrected. Heritage resources not only form and make concrete our collective identity, they provide important economic opportunities. Any damage to these resources should be expressly accounted for in a balancing test to determine whether a project serves the public.

TRIBAL CONSULTATION

Relatedly, we recommend that FERC incorporate tribal consultation into the balancing test. The NHPA, NEPA, and the federal trust responsibility require meaningful, government-to-government consultation with tribes before making decisions on projects that affect them. FERC has recognized this responsibility in 18 C.F.R. § 2.1c, FERC's cultural resources guidance, and FERC's tribal consultation policy. Too often, however, tribal "consultation" is initiated by a project proponent (as opposed to federal officials with decision-making authority) via form letters and public meetings. This creates an atmosphere in which tribes are reluctant or unable to share information about sensitive heritage resources.

Consultation, when it does occur, typically happens after a project has been designed and sited, which limits meaningful and timely input by tribes and can lead to conflict and delays in the certification process. To ensure that tribal resources are considered and potentially protected, FERC should incorporate effective tribal consultation as a factor in its balancing test. Where tribal concerns have not been addressed early in the process and in a manner suitable for government-to-government consultation, a project is less likely to serve the public interest and may cause outcry by the general public.

IMPROVING EFFICIENCY

The NOI poses several questions related to improving efficiency in the permitting process. ACRA advocates for a process that is streamlined but also provides for adequate review, including public education and involvement. We caution that, as it considers streamlining measures, FERC should be cognizant of Section 106 and NEPA consultation requirements and incorporate sufficient time to ensure effective consultation and thorough analysis of potential effects on historic resources. Too often, effective consultation falls through the cracks when project proponents push for an expedited process.

We offer common-sense suggestions to improve efficiencies in evaluating and assessing effects on cultural resources. We recommend the following measures to streamline review:

- (1) Incorporate Section 106 review into the pre-filing process.** FERC's pre-filing process allows stakeholders to provide input in the early planning stages of a project,

alerting FERC and project proponents to possible environmental concerns. When these concerns are identified early, FERC and the project proponent are more easily able to identify alternative routes, avoidance, or mitigation measures. Conversely, when concerns surface later in the environmental review process, FERC is more likely to get bogged down in an analysis of alternatives that may be ultimately unworkable. Simply put, it is easier to address these concerns when they surface early in the process. The Commission's analysis will need to determine whether the applicant has eliminated or minimized adverse effects the project might have on landowners and communities affected by the proposed project. This analysis must include effects on resources related to our nation's heritage.

FERC could improve existing efficiencies by extending the pre-filing process to include gathering information relevant to cultural resources review and initiating consultation during pre-planning. Similar to other environmental concerns, it is sometimes possible to identify cultural resource constraints early in the process, opening the door for mitigation strategies (such as rerouting and other alternatives to avoid cultural resources) and averting the need for last-minute project changes and further, potentially costly, analysis.

An additional advantage to incorporating Section 106 into the pre-filing process is that ex parte communication rules do not apply during the pre-filing process. Section 106 consultation is more effective when ex parte rules are not in effect, as tribes are able to directly communicate their concerns to FERC staff in a confidential manner.

(2) Enforce coordination with NEPA review. Currently FERC encourages a voluntary pre-filing program for natural gas pipeline projects where applicants can coordinate with Commission staff and others to identify and resolve major environmental issues on a project before filing an application. FERC guidance directs project sponsors to coordinate historic property investigations with environmental studies conducted under NEPA. This process is also allowed under 36 C.F.R. § 800.8. Coordination is a common-sense, time-saving measure that, if enforced, will work well combined with early consultation, coordination, and pre-filing requirements.

(3) Support digitization of historic resource surveys. According to a 2014 survey conducted by the National Conference of State Historic Preservation Officers, only 52% of inventoried historic resources in the United States have been digitized. Of these digitized resources, a much smaller percentage is linked to a Geographic Information System (GIS)-based database (most are simply scanned pages of paper reports). State and tribal historic preservation offices need funding to digitize their historic resource surveys to create a complete record of inventoried historic places in GIS format. Supporting further digitization means cultural resource locations can be readily incorporated into design planning.

In addition to digitizing existing databases, FERC could support predictive models that anticipate where cultural resources are likely to be discovered. A GIS tool that accurately predicts areas of high, medium, and low risk for encountering cultural resources will allow FERC to make recommendations on how to avoid and minimize adverse impacts, leading to shortened review times and expedited project schedules.

(4) Increase the use of programmatic approaches to environmental and historic preservation review. A programmatic agreement (PA) is the proper, existing mechanism to exempt certain classes of federal actions from traditional Section 106 review. Other agencies, such as the Federal Aviation Administration and various departments of transportation have used PAs extensively to comply with Section 106. PAs have been effective in creating alternate procedures to stage or tier analysis, provide predictive models, and streamline compliance.

(5) Merge NEPA and Clean Water Act Section 404 permitting processes. The U.S. Army Corps of Engineers should, as necessary, issue a Section 404 permit at the end of the NEPA process, based on the information generated by the NEPA review. All too often, the current practice is to conduct a separate and subsequent permit review, causing additional delays and bureaucracy.

(6) Improve and increase opportunities for public involvement during project planning stages and early stages of project development. This recommendation would provide the public with an early opportunity to voice concerns about project impacts on their communities. These concerns can then be addressed early, and like other recommendations here for early review, may assist in avoiding or reducing subsequent controversies and conflicts. The Policy Statement (Section G, Page 22) explains that the Commission will consider whether a proposed project's anticipated public benefits outweigh its residual adverse effects on economic interests. It is important for the Commission to recognize that these are not necessarily opposite values, and public benefits may also have economic interests beyond those of the project applicant. For example, a historic main street with a vibrant downtown community will increase community trickledown money, may decrease transportation costs and environmental effects, and may provide long-term and other community benefits, among the many other considerations. Public benefit and economic interests need not be exclusive.

CAH believes that the increased discipline and early review promoted in our recommendations ensures greater coordination, transparency, and predictability in the environmental review and permitting process as required in Executive Order 13807. Project decision making has heretofore been less informed, in part because the American people have not had an adequate and fair opportunity to assess the need and value of interstate gas projects. We reiterate that early review/analysis will benefit American society, our economy and the environment while improving infrastructure development for all Americans to enjoy. By implementing these measures, FERC can both expedite the project review process and advance interstate natural gas projects in a timely manner.

Thank you for the opportunity to comment on FERC's NOI and the policy statement on the certification of interstate natural gas transportation facilities.

Respectfully Submitted,

The Coalition for American Heritage

By: Marion Werkheiser
Cultural Heritage Partners, PLLC
2101 L Street NW, Suite 800
Washington, DC 20037
202.567.7594
marion@culturalheritagepartners.com