LNG Development in the Northeast

A Little History...

- Natural Gas Act came before LNG
- Order No. 613/Distrigas v. FPC, 1972-1974
  - Defines LNG as natural gas
  - All gas imports are in interstate commerce
  - NGA Section 3 authority is flexible
    * NGA §3 authority over LNG facility
    * NGA §7 authority begins at outlet of LNG facility
- Hackberry Policy (2002) allows closes access
  - Ends economic regulation of LNG facility

Office of Energy Projects
Swords Crossed...

*Sound Energy Solutions*

- CPUC insists it has jurisdiction
  - Gas is only for intrastate consumption
- FERC says no; issues declaratory order
- CPUC files for rehearing; FERC denies
- CPUC files appeal with 9th Circuit
- FERC asks Congress to confirm its authority via legislation.
EPAct 2005 and LNG

- **Section 311**
  (Revised NGA § 3, new § 3A)
  - FERC: Exclusive Authority
  - Codifies Hackberry Policy
  - Mandatory Pre-filing
  - State and Local Considerations

- **Section 313**
  (Revised NGA §§ 15, 19)
  - FERC acts as lead agency
  - FERC maintains consolidated record
  - Judicial streamlining

What Has FERC Done With EPAct Mandates?

- Order No. 665 (Pre-filing)
  - NOPR: August 26, 2005
  - Final Rule: October 7, 2005
- Order No. 687 (Coordination/Consolidation)
  - NOPR: May 18, 2006
  - Final Rule: October 19, 2006
FERC Acts as Coordinator

➢ Pre-filing

➢ Application

Pre-Filing Process

• Pre-filing process must begin at least six months prior to filing an application.

• Pre-filing procedures are designed to encourage cooperation with state and local authorities.
Pre-filing Process:

**Preliminary Activities**

- Project sponsor must consult with Director, OEP, prior to filing a request to use the pre-filing process.
- The initial filing, or request letter, must include specific information.
- If requirements satisfied, notice is issued and pre-filing has commenced.

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**Pre-filing Process: During Pre-filing**

<table>
<thead>
<tr>
<th>Time</th>
<th>Activity Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>+7 days</td>
<td>Applicant identifies locations for open houses, agency meetings</td>
</tr>
<tr>
<td>+14 days</td>
<td>Applicant executes third-party contract and informs all stakeholders of project</td>
</tr>
<tr>
<td>+30 days</td>
<td>Applicant submits mailing list and draft Resource Report 1</td>
</tr>
</tbody>
</table>
Pre-filing Process: During Pre-filing

- Monthly reports on applicant’s project activities.
- Attend and participate in scoping meetings.
- Attend site visits and other meetings.

End of Scoping
+14 days Applicant responds to issues
+60 days File draft Resource Reports 1-12

Prior to Filing Application
-90 days Applicant files draft Resource Report 13
-60 days Applicant files revised draft Resource Reports 1-12, if required
### Application Process: Setting Schedule

<table>
<thead>
<tr>
<th>Event</th>
<th>Duration</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application is filed at FERC</td>
<td>+0 days</td>
<td>Application must identify all required Federal authorizations</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(Agencies have 30 days from receipt of application to advise Commission)</td>
</tr>
<tr>
<td></td>
<td>+90 days</td>
<td>Notice describing environmental review schedule</td>
</tr>
<tr>
<td>FERC EA or EIS Issuance</td>
<td></td>
<td>Deadline for agency decisions</td>
</tr>
</tbody>
</table>

### Application Process: Consolidation

<table>
<thead>
<tr>
<th>Event</th>
<th>Duration</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Authorization Date/Schedule Expiration</td>
<td>+30 days</td>
<td>Agency must file copy of decision/action and an index to the record</td>
</tr>
<tr>
<td></td>
<td></td>
<td>upon which the decision was based</td>
</tr>
</tbody>
</table>

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Office of Energy Projects
Effect of EPAct

_A Balance - State Side_

- Does not take away delegated federal permitting authority (or any other federal permitting).
- Allows a state to play a role in safety considerations
  - State agency consultation
  - Advisory report
  - Safety inspections
  - Emergency Response Plan
Effect of EPAct
A Balance - FERC Side

- Pre-filing required
  - States urged to participate
- Allows FERC to establish schedule for Federal authorizations and to establish “one record”
- Provides for swifter judicial review

Conclusion

- Congress saw need for expediting the federal review of new LNG infrastructure
  - Gave FERC more weapons
- Congress saw need to allow states to have say
  - Reaffirmed state authority; allows participation in safety considerations
- Result: FERC has crafted regulations that capture Congress’ intent and will result in timely infrastructure decisions while including the states as partners in the process.