



March 10, 2020

Council on Environmental Quality
Attn: Edward A. Boling
730 Jackson Place, NW
Washington, D.C. 20503
Via regulations.gov

**Re: Comments Supporting Notice of Proposed Rulemaking on Regulations
Implementing the Procedural Provisions of the National Environmental Policy Act
[Docket No. CEQ-2019-0003]**

In response to the Council on Environmental Quality (CEQ)'s notice of proposed rulemaking ("NOPR or proposal"), the Natural Gas Supply Association (NGSA) and the Center for Liquefied Natural Gas (CLNG) respectfully submit the following comments. NGSA and CLNG support CEQ's proposal to modernize and clarify the National Environmental Policy Act (NEPA) regulations to facilitate more efficient, effective, and timely environmental reviews by federal agencies. Importantly, CEQ's proposal adopts much-needed changes due to statutory, judicial and policy developments since NEPA was first issued fifty years ago.

I. Interest of NGSA and CLNG

Founded in 1965, the Natural Gas Supply Association (NGSA) represents integrated and independent energy companies that produce, transport and market domestic natural gas and is the only national trade association that solely focuses on producer-marketer issues related to the downstream natural gas industry. NGSA's members trade, transact and invest in the U.S. natural

gas market in a range of different manners. NGSAs members transport and/or supply billions of cubic feet of natural gas per day on interstate pipelines and could be greatly impacted by the outcome of this proceeding.

The Center for LNG advocates for public policies that advance the use of LNG in the United States, and its export internationally. A committee of the Natural Gas Supply Association, CLNG represents the full value chain, including LNG producers, shippers, terminal operators and developers, providing it with unique insight into the ways in which the vast potential of this abundant and versatile fuel can be fully realized.

II. Comments

i. NGSAs and CLNG support CEQ's overarching goal of promoting effective environmental reviews for permitting vital natural gas infrastructure.

We encourage CEQ to act swiftly to adopt the much-needed changes proposed in this proceeding. Given the significant number of comments filed in response to the advanced notice of proposal rulemaking, we commend CEQ for its thoroughness and responsiveness to the extensive number of stakeholder recommendations and comments. The NOPR provides clarifications on the application of NEPA and helpful direction to Federal agencies to assist with their decision-making processes. Most importantly, the proposal appropriately balances its objective of completing thorough environmental reviews with a more efficient process that is more reflective of what is required for implementing NEPA regulations in today's environment.

As NGSAs and CLNG acknowledged in our comments on the advanced proposal, it is good governance to take a fresh look at long-standing, broad-reaching policies to determine whether improvements are needed. This is the first time CEQ is proposing comprehensive changes to its NEPA regulations in over fifty years. Thus, updating these regulations is long overdue to ensure

that vital infrastructure projects are reviewed and permitted on a timely basis so consumers can access the benefits these projects provide. While updating the NEPA process to better reflect today's environment, the proposal does not lose sight of the statute's intended objective from its adoption in 1978: to "reduce paperwork, to reduce delays, and at the same time to produce better decisions [that] further the national policy to protect and enhance the quality of the human environment."¹

Permitting regulations that are efficient and effective has provided the United States with an advanced and resilient energy transportation system and enabled consumers to access the benefits of affordable, clean and abundant natural gas supplies. The Energy Information Administration 2020 Annual Energy Outlook shows that demand for natural gas will continue to grow over the next 20 years for use here in the United States as well as for export abroad.² With this growth, analysts estimate that rising gas demand and production levels could spur the need for up to 21 billion cubic feet per day of new gas pipeline infrastructure.³ Updating NEPA regulations is an essential component to ensuring an environment that is conducive to continued investment in new natural gas capacity as it is needed to reliably meet growing demand.

ii. CEQ's proposal appropriately integrates Executive Order 13807 to facilitate timely, thorough and effective project reviews across Federal agencies.

NGSA and CLNG support CEQ's proposal to specifically codify the One Federal Decision policy, which includes development of a joint schedule by the lead agency for cooperating agencies to follow; procedures to elevate delays or disputes between agencies; preparation of a

¹ 43 FR 55978 (Nov. 29, 1978); *see also* 44 FR 873 (Jan. 3, 1979) (technical corrections), and 43 FR 25230 (June 9, 1978) (proposed rule).

² *See*, Energy Information Administration, 2020 Annual Energy Outlook, January 2020.

³ *See* 'The Role of Natural Gas in the Transition to a Lower-Carbon Economy,' The INGAA Foundation, May 2019, found [here](#).

single environmental impact statement (EIS); and development of a joint record of decision (to the extent practicable) with a target two-year completion for environmental reviews. Given that multiple Federal agencies participate in the environmental review and permitting process, incorporating key elements of Executive Order 13807 into NEPA regulations will improve interagency coordination and make development of NEPA documents more efficient.⁴

These measures give project sponsors more confidence in the NEPA process and allow for a clearer, more transparent and reliable review process. Unnecessary delays that are sometimes due to setbacks at cooperating agencies can substantially increase the cost of energy to consumers by significantly adding to infrastructure project costs. By strengthening the role of the lead agency and incorporating the key elements of the One Federal Decision policy, project sponsors are provided some added assurance that their project will be held to a schedule for review and that measures will be in place to avoid unnecessary delays that could be created by agencies with varying schedules.

iii. Clarifying terms, application and scope of NEPA review will provide greater regulatory certainty during the permitting process.

NGSA and CLNG support CEQ's efforts to provide additional direction for Federal agencies' implementation of NEPA regulations. These clarifications are essential because the various interpretations regarding the scope of a NEPA review can be contentious. For example, the natural gas industry has experienced a continual rise in litigation at federal agencies and in the courts challenging the Federal Energy Regulatory Commission's (FERC) application of

⁴ On August 15, 2017, President Trump issued Executive Order 13807, 'Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects,' establishing a One Federal Decision policy, a two-year goal for completing environmental reviews for major infrastructure projects, and directing CEQ to consider revisions to modernize its regulations.

NEPA, which results in project delays and significant cost increases for natural gas projects. While project sponsors may receive their approvals from FERC, an important milestone and indicator of project success, the fate of their project may ultimately rest with a court decision. The lack of regulatory certainty associated with NEPA litigation diminishes incentives to invest in gas infrastructure, increases consumer costs and deprives communities at home and abroad of needed jobs and clean natural gas supplies.

Despite the rigorous environmental reviews conducted by FERC, the Department of Energy, and countless other agencies in accordance with NEPA regulations and these agencies organic statutes, a number of court challenges have one core objective: eliminate fossil fuel use and the transportation system that enables its delivery.⁵ However, NEPA regulations were not designed to drive a certain policy outcome regarding the Nation’s resource mix; and the Supreme Court has made clear that NEPA forces disclosure of the environmental impacts associated with a project, but stops short of dictating particular results: “NEPA imposes only procedural requirements on Federal agencies... to undertake analyses of the environmental impact of their proposals and actions.”⁶

Because NEPA reviews are not the appropriate forum to consider broad national energy policies, we support CEQ’s proposed clarifications to better define the scope of a NEPA review and to properly focus on the comprehensive review of environmental impacts. For NGSA and CLNG members, we are encouraged by the following proposals in the NOPR that are essential

⁵ See e.g., Second Circuit intervenor brief in support of FERC in *Catskill Mountainkeeper v. FERC* found [here](#) and *Sierra Club vs. U.S. Dep’t of Energy*, 867 F.3d 189 (D.C. Cir. 2017).

⁶ See, *Department of Transportation v. Public Citizen*, 541 U.S. at 756-57.

components required to advance CEQ's intended objectives as well as to provide proper direction to Federal agencies:

- a. **Adoption of a threshold applicability analysis.** CEQ proposes five considerations to help agencies determine whether NEPA applies to a proposed action. On balance, CEQ is also proposing to clarify that agencies can make this determination on a case-by-case basis. This approach is beneficial because it is flexible, will better assist agencies in their decision-making, and removes any ambiguity as to why a project may or may not be subject to a NEPA review.
- b. **Direction on the application of the three levels of NEPA review: Categorical Exclusions, Environmental Assessments and Environmental Impact Statements.** Different project circumstances call for different types of environmental reviews. While current NEPA regulations already dictate this process, Federal agencies will benefit from the additional clarity on the process agencies should follow to determine which type of document is required based on the significance of the effects.
- c. **Recognizing the need to narrow the definition of "reasonable alternatives."** NEPA does not provide guidance concerning the range of alternatives an agency must consider for each project. This change appropriately focuses the review on reasonable alternatives and that the alternatives must be technically and economically feasible. While the number of alternatives considered may vary across agencies, CEQ clarifies that agencies should not consider alternatives outside of its jurisdiction or that do not address the needs of the project's proponent.
- d. **Clarification that Federal agencies should use reliable existing information and studies to inform analyses, and that they are not required to undertake new scientific and technical research each time.** Federal agencies have the experience and expertise to best determine what information is needed to inform their analyses and decision making. Since Federal agencies have a limited number of resources, we support changes that promote the most effective and efficient use of these resources and eliminate the need to perform studies not required under existing environmental statutes solely for purposes of satisfying NEPA.
- e. **Clarification that Federal agency NEPA procedures to implement the CEQ regulations shall not impose additional procedures or requirements beyond those set forth in the CEQ regulations except as otherwise provided by law or agency efficiency.** Absent this direction, overly prescriptive regulations by Federal agencies to implement NEPA could impede CEQ's goal to modernize and update the environmental review process.

- f. **Clarification of environmental effects.** NGSA and CLNG provide additional comments on this below.

CEQ is proposing to amend the definition of “environmental effects” to provide clarity on the bounds of effects consistent with U.S. Supreme Court precedent. CEQ acknowledges that the terms direct, indirect and cumulative have led to confusion, been interpreted expansively and can lead to speculative assessments and ‘scope creep’. Therefore, the proposal clarifies that the definition for environmental effects is: “reasonably foreseeable and have a close causal relationship to the proposed action or alternatives; a ‘but for’ causal relationship is insufficient to make an agency responsible for a particular effect under NEPA.”⁷ This definition affirms that application of NEPA should not include evaluating impacts that are outside the agency’s jurisdiction or are too speculative or not reasonably foreseeable because it does not advance NEPA’s goals of environmentally informed decision-making.

iv. Bringing NEPA into the Modern Era is Essential.

CEQ’s proposal includes commonsense changes to bring its regulations into the modern era, such as changes that would codify the use of electronic distribution of documents or requests for comments instead of the statute’s sole reference to circulation of hard copies. There are also references to publications that no longer exist (such as OMB Circular A-95) and we agree with CEQ’s proposal to eliminate these references to reduce confusion. Another suggested change is removing duplicative processes by facilitating use of documents required by other statutes or documents that have already been prepared by state, tribal or local agencies to comply with

⁷ This is consistent with the Supreme Court’s holding in *Department of Transportation v. Public Citizen*, 541 U.S. at 767-68.

NEPA. These simple but meaningful changes will reduce paperwork and delays and modernize the NEPA process to be more accessible to the public.

v. ***CEQ's proposed enhancements to public outreach strengthen the application of NEPA.***

NGSA and CLNG support CEQ's proposed approaches to enhance public outreach during the permitting process because input from the public, especially those impacted by proposed infrastructure projects, better informs the decision-making process by Federal agencies. CEQ proposes to facilitate meaningful public comment by directing agencies to request timely comment on potential alternatives and relevant information concerning impacts affecting the quality of the human environment. Not only does CEQ propose that agencies include a new section in the draft and final EIS summarizing all alternatives and analyses submitted by the public, which is then open for public comment, it goes one step further and requires the agency to *certify* it has considered such information. We believe this approach increases stakeholder confidence in the process and ensures their concerns have been given the consideration they deserve.

III. Conclusion

NGSA and CLNG support CEQ's proposal to modernize and clarify its NEPA regulations, which will facilitate more efficient, effective and timely reviews. If adopted, the clarifications and proposed changes will bring regulatory certainty to the permitting process to both project developers and concerned stakeholders by incorporating key elements of the One

Federal Decision policy; clarifying the terms and scope of NEPA reviews; modernizing the NEPA process; and strengthening public outreach to better inform agency decision-making.

Sincerely,

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