

November 22, 2021

Council on Environmental Quality
Attn: Amy B. Coyle
730 Jackson Place, NW
Washington, D.C. 20503
Via regulations.gov

**Re: Notice of Proposed Rulemaking on National Environmental Policy Act
Implementing Regulations Revisions [Docket No. CEQ-2021-0002]**

In response to the Council on Environmental Quality’s notice of proposed rulemaking on National Environmental Policy Act Implementing Regulations Revisions (“proposal”), the Natural Gas Supply Association (“NGSA”) respectfully submits the following comments on CEQ’s proposal to revert certain key regulatory provisions back to the 1978 NEPA regulations. While NGSA is supportive of CEQ’s mission to ensure effective environmental reviews for permitting infrastructure projects, NGSA strongly encourages CEQ to consider the benefits of a more modern framework for conducting environmental analyses. As CEQ finalizes its proposal, it should not overlook the importance of having predictable and clear NEPA regulations in place, which provide regulatory certainty and incentivize investment in infrastructure to meet a lower carbon energy future.

I. Interest of NGSA

Founded in 1965, 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

matters. 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.

NGSA encourages the use of natural gas within a balanced national energy policy and supports the benefits of competitive markets. NGSAs are dedicated to achieving a lower carbon future through strong partnerships with renewables and supporting innovative technologies and market solutions that reduce emissions, such as a price on carbon. Our companies are committed to reducing methane emissions as an essential component of achieving a lower carbon energy future. NGSAs have consistently advocated for well-functioning natural gas markets, policies that support market transparency, efficient nomination and scheduling protocols, just and reasonable transportation rates, non-preferential terms and conditions of transportation services and the removal of barriers to developing needed natural gas infrastructure.

II. Comments

In June 2018, the Council for Environmental Quality (“CEQ”) initiated an extensive rulemaking process, with multiple opportunities for stakeholder input, to consider modernizing and updating the 1978 implementing regulations for the procedural provisions of the National Environmental Policy Act (“NEPA”). NGSAs supported CEQ’s proposals to facilitate more efficient, effective, and timely environmental reviews by Federal agencies. Importantly, CEQ proposed to adopt much-needed changes due to statutory, judicial and policy developments since NEPA was first issued fifty years ago. In keeping with the proposed rule, the final rule promulgated on July 16, 2020, made comprehensive updates to NEPA regulations while prioritizing thorough and sound environmental reviews (“2020 NEPA Regulations”).

After a mere one year since the adoption of the new procedural regulations, CEQ announced its intent to reconsider and revise the 2020 NEPA Regulations. This proposal is the first phase of two that will consider modifications to the implementing regulations for NEPA. In this phase one proposal, CEQ proposes to amend three regulatory provisions by generally reverting to the language from the 1978 NEPA Regulations, subject to minor revisions for clarity: (1) To eliminate language in the description of purpose and need for a proposed action when it is an agency's statutory duty to review applications for authorization (40 CFR 1502.13) and make a conforming edit to the definition of “reasonable alternatives” (40 CFR 1508.1(z)); (2) to remove limitations on agency NEPA procedures for implementing CEQ's NEPA Regulations (40 CFR 1507.3); and (3) to return to the definitions of “effects” in the prior 1978 NEPA Regulations (40 CFR 1508.1(g)).

As discussed in more detail below, NGSA is concerned with certain aspects of CEQ's proposal to modify its implementing procedures for NEPA and asks CEQ to take several recommendations into consideration. If CEQ moves forward with reverting certain key regulatory provisions from the 2020 NEPA Regulations, it must balance this effort with a modern framework that reflects the permitting needs of the current energy landscape and significant policy and judicial developments in recent years. Reverting to the previous framework should not result in taking a step backwards for advancing projects, nor should the proposal ignore the significant support from diverse groups of stakeholders in the prior rulemaking process for clarifying and updating these key NEPA provisions, which promoted timely and efficient environmental reviews and reduced unnecessary hurdles in the review process. Given that the U.S. is in the midst of a transition to a lower carbon energy future and a recovering economy due to the COVID-19 pandemic, CEQ should strive to put policies in place

that enable the development of needed natural gas infrastructure to support the growth of lower carbon technology and fuels and ensure electric grid reliability and resiliency.

Moreover, we are concerned that CEQ is not considering the implications of once again changing the regulations and/or guidance associated with environmental reviews and the permitting process. The lack of consistency across different Administration's proposals for NEPA regulations and guidance, as well as the potential for future Administration's revisions, creates confusion, weakens investor confidence, and diminishes regulatory certainty in the permitting process. NGSAs are concerned that the 2020 efforts to modernize NEPA were not provided a proper opportunity to demonstrate whether the changes will improve the process or warrant additional revision. While NGSAs prefer that CEQ retain the 2020 NEPA Regulations, we submit the following comments on CEQ's proposal.

A. CEQ Should Promote a Modern NEPA Framework that Supports Permitting Infrastructure Needed to Transition to a Lower Carbon Energy Future and a Reliable Electric Grid.

NGSAs are committed to a lower carbon energy future and our member companies are actively working to advocate for policies that protect the environment, including rejoining the Paris agreement, supporting an economy-wide price on carbon, and committing to reductions in methane emissions, while meeting growing energy demand. The natural gas industry serves an integral role in the U.S. energy future – the industry is taking significant steps to invest in new technologies to reduce emissions and projects to transition to cleaner energy, such as natural gas pipelines to transport methane from supply basins to reduce flaring; natural gas combined cycle plants to displace coal plants; low-carbon hydrogen production plants produced from natural gas; and carbon capture, utilization and storage technology. These important investments in new technology and innovation to reduce emissions are also a significant priority of the

Administration’s climate mitigation approach.¹ As the natural gas industry works towards building out a more modern and lower carbon power grid, there needs to be an equally modern and effective environmental review process to facilitate investment in this infrastructure.

Moreover, natural gas also serves a critical role in maintaining electric power grid reliability. CEQ should not overlook the importance of having sufficient natural gas infrastructure in place to provide the reliability consumers depend on for home use and for electricity. The North American Electric Reliability Corporation (NERC), the regulatory authority whose mission is to assure the effective and efficient reduction of risks to the reliability and security of the power grid, recognizes that “additional pipeline infrastructure is needed to reliably serve [electricity] load.”² Further, pipeline expansions are recognized as “mechanisms promoting fuel assurance,” and that “[p]ipeline expansion into constrained areas significantly promotes [bulk power system] fuel assurance.”³ This becomes even more important as more intermittent energy resources are integrated into the grid and with electrification of the transportation sector. Many of those resources are dependent on having a flexible, fast-ramping resource, such as natural gas generation plants, to provide back-up generation and frequency stability. Thus, CEQ should avoid creating a higher threshold or implementing additional hurdles to permitting gas infrastructure in its final rule.

¹ See references to “The United States can address carbon pollution from industrial processes by supporting carbon capture as well as new sources of hydrogen” and “Creating jobs and tackling climate change go hand in hand – empowering the U.S. to build more resilient infrastructure,” quoted from the White House, *FACT SHEET: President Biden Sets 2030 Greenhouse Gas Pollution Reduction Target Aimed at Creating Good-Paying Union Jobs and Securing U.S. Leadership on Clean Energy Technologies*, April 22, 2021, linked [here](#).

² NERC, Long-Term Reliability Assessment at 38 (Dec. 2020)

https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_LTRA_2020.pdf

³ *Id.* at 34.

B. CEQ Must Ensure the NEPA Regulations Continue to Provide Clarity, Predictability, and a Defined Scope for the Environmental Review Process.

The 2020 NEPA regulations provide clarifications on the application and scope of NEPA and helpful direction to Federal agencies to assist with their decision-making processes. In promulgating a final rule, CEQ must ensure that reverting to the prior regulations does not impede the progress made toward a more efficient, transparent and predictable review process. For instance, CEQ is proposing to make the CEQ NEPA procedural requirements “a floor, rather than a ceiling,” with respect to what agencies can require for NEPA analysis in their own agency-specific NEPA procedures keyed to the base CEQ rules. While NGSA is supportive of allowing agencies a degree of flexibility to tailor their agency-specific NEPA procedures to align with their unique mission, so long as those procedures are consistent with NEPA regulations and the agency’s statutory authority, we are concerned with the potential for ‘scope creep’ or overly prescriptive regulations. Allowing Federal agencies to broaden the scope of NEPA without clear boundaries could create unnecessary hurdles for proposed projects during the environmental review process and could also greatly increase the duration of reviews. Further, this does not address potential confusion from any inconsistent approaches or different requirements imposed by Federal agencies, beyond those in the CEQ regulations, for projects requiring multi-agency review. This is particularly unfortunate given the lengths the 2020 NEPA Regulations went to coordinate inter-agency reviews. The 2020 NEPA Regulations strengthened the role of the lead agency and incorporated the key elements of the One Federal Decision⁴ policy, which gave project sponsors added assurance that their project will be held to a schedule for review and that

⁴ See E.O. 13807 of August 15, 2017, "Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects," 82 Fed. Reg. 40,463 (Aug. 24, 2017).

measures will be in place to avoid unnecessary delays that could be created by agencies with varying schedules.

NGSA supports sound greenhouse gas and climate change analysis as part of the review of federal agency actions under NEPA, to ensure that policymakers and the public are well-informed about the potential implications of such actions for a lower carbon future and for climate change. In its proposal, CEQ is proposing to restore the terms “direct” and “indirect” to the definition of “effects.” Prior to the clarified and narrowed definition of “effects” in the 2020 NEPA Regulations, these terms were the subject of extensive litigation challenging how Federal agencies considered effects and to what extent. The terms led to confusion, were interpreted expansively and could lead to speculative assessments. If CEQ adopts the previous terms and definitions, it must also provide Federal agencies with a defined scope. Implementing 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.

C. CEQ Must Take a Measured Approach to Modifying the Regulations to Safeguard Regulatory Certainty in the Permitting Process.

Should CEQ move forward with its proposal, it should provide even greater regulatory certainty and help improve the NEPA process in a way that remains fully consistent with NEPA’s statutory intent. However, we are concerned with the impact that varying and inconsistent policies/guidance for implementing NEPA among administrations have on investor confidence and certainty for project sponsors. Since infrastructure projects take several years to go from conception to operation, it is imperative to have regulatory certainty and predictability throughout the permitting process to ensure the project is viable each step along the way. If every new Administration continues to make significant changes to the NEPA regulations,

project sponsors risk lengthy delays and lost capital as Federal agencies implement an updated process and possibly issue their own new agency-specific policies.

Moreover, CEQ should consider whether there has been sufficient time under the new regulations to determine that it should revert these regulatory provisions back to the 1978 regulations. While CEQ initiated a review of the 2020 NEPA Regulations per Executive Order 13990 and Executive Order 14008⁵, it does not offer any specific examples or data as to why the 2020 NEPA Regulations are not sufficient. Further, the proposal overlooks the significant support from industry and other stakeholders on the need for a more modern framework for environmental reviews. NGSA encourages CEQ to carefully assess what modifications are truly needed and take a measured approach before adopting any significant changes, particularly any that may make the environmental review process less efficient or predictable.

III. Conclusion

Given the importance of regulatory certainty for investment in infrastructure projects and the need for a modern framework to permit projects that will help the U.S. transition to a lower carbon power grid while maintaining electric reliability, NGSA requests CEQ consider the concerns and recommendations discussed above before adopting its proposal.

Sincerely,

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⁵ See E.O. 13990, “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis”, (January 20, 2021) and E.O. 14008, “Tackling the Climate Crisis at Home and Abroad,” (January 27, 2021).