



OFFICE OF INSPECTOR GENERAL

U.S. Department of Energy

AUDIT REPORT

DOE-OIG-18-33

May 2018

**THE FEDERAL ENERGY REGULATORY
COMMISSION'S NATURAL GAS
CERTIFICATION PROCESS**



Department of Energy
Washington, DC 20585

May 24, 2018

MEMORANDUM FOR THE CHAIRMAN, FEDERAL ENERGY REGULATORY
COMMISSION

April Stephenson

FROM: April G. Stephenson
Principal Deputy Inspector General

SUBJECT: INFORMATION: Audit Report on “The Federal Energy Regulatory
Commission’s Natural Gas Certification Process”

BACKGROUND

The Federal Energy Regulatory Commission (FERC) is an independent agency that regulates the Nation’s natural gas industry under authorities granted by the *Natural Gas Act of 1938*, the *Energy Policy Act of 2005* (EPAAct 2005), and other statutes. Established in 1977, FERC approves the construction, operation, and location of natural gas interstate pipelines and facilities by issuing certificates of public convenience and necessity. The application process for natural gas projects can be complex and involves multiple FERC offices as well as a variety of Federal, state, and local stakeholders.

Because of significant growth of the natural gas industry, increased public awareness of FERC’s role in the application review process, and heightened controversy over pipeline projects, the public has been more involved in the development and siting of natural gas facilities. Given the importance and complexity of FERC’s mission for reviewing natural gas applications and issuing certificates of public convenience and necessity, as well as the significance of recent Congressional attention, we initiated this audit to determine whether FERC’s natural gas certification process was performed in accordance with relevant laws, regulations, policies, and procedures, to include timeliness and stakeholder input¹.

RESULTS OF AUDIT

Nothing came to our attention to indicate that FERC had not generally performed the natural gas certification process in accordance with applicable laws, regulations, policies, and procedures, including the *Natural Gas Act of 1938* and EPAAct 2005. During our review of the overall certification process and a sample of closed natural gas applications, nothing came to our

¹ Stakeholders include, but are not limited to, potentially affected landowners; nearby residents; concerned citizens; elected representatives; Federal, state, and local government officials; non-governmental organizations (local or national advocacy groups and chambers of commerce, etc.); Native American tribes; community leaders; and the media.

attention to indicate that FERC had not performed its due diligence in reviewing and making determinations on natural gas certification applications based on a consideration of the public benefits and adverse impacts of the proposed projects. In addition, although there were no specific statutory or regulatory deadlines for processing natural gas certification applications, we found that FERC generally adhered to an internally established timeliness performance measure. Finally, we found that FERC addressed stakeholder concerns by obtaining, considering, and aggregating stakeholder input throughout the natural gas certification process; however, as described in more detail below, FERC lacked sufficient controls to ensure comments were consistently addressed.

While we did not find any concerns that called into question the appropriateness of decisions FERC made on natural gas certification applications, we identified four areas for improvement that, if addressed, could aid FERC in more efficiently and effectively managing its natural gas certification process:

- **Process Transparency:** FERC had not fully ensured that its natural gas certification process was transparent to stakeholders. Specifically, while there are a number of ways that FERC informs stakeholders about the natural gas certification process, such as scoping meetings, the FERC website, and the landowner pamphlet, FERC could improve the information included on its website or in the landowner pamphlet distributed to the public. The absence of sufficient information on how the process works may hinder stakeholders' ability to fully participate in the process and may have not met the intent of the transparency requirements established by Executive Order 13604, *Improving Performance of Federal Permitting and Review of Infrastructure Projects*. FERC officials within the Office of Energy Projects stated that they did not believe FERC was subject to this order, noting that FERC was not specifically listed as a member of the Steering Committee described in the Executive Order. While we agree that the responsibilities of the Steering Committee, as defined by the Executive Order, do not apply to FERC, we believe that the Executive Order's clearly defined intent of improving the performance of Federal permitting and review of infrastructure projects (specifically within the natural gas industry, which is a key aspect of FERC's mission) would apply to FERC's natural gas certification process. Further, in discussing the draft report with FERC, an official from its Office of the General Counsel noted that FERC's natural gas certification process would fall under the Federal permitting and review processes addressed in the Executive Order.
- **Public Access to FERC Records:** The design of the public interface to FERC's document repository, eLibrary, and the lack of publicly available training potentially limited stakeholders' ability to access FERC policies and documents related to specific project applications. Additionally, for a period of 9 years (2006-2015), FERC did not post Notices of Schedule for Environmental Review (Notice of Schedule) in the Federal Register, which notifies stakeholders, including other agencies issuing Federal authorizations, of FERC's planned schedule for completion of environmental review, as required by 18 Code of Federal Regulations (CFR), Section 157.9 *Notice of Application and Notice of Schedule for Environmental Review*. Per FERC officials, they revised their processes and began posting notices in the Federal Register in 2015.

- **Tracking Stakeholder Comments:** FERC lacked controls to track and address stakeholder comments. Specifically, while we observed that FERC was obtaining, considering, and aggregating stakeholder comments throughout the natural gas certification process, we found that FERC did not have documented processes or a consistent methodology for tracking the disposition of stakeholder comments regarding proposed natural gas projects. In the absence of a consistent methodology, we did not verify to what degree comments received by FERC were considered, aggregated, and reflected in the environmental documents or final orders for the certificate applications during our review. The lack of a consistent methodology could increase the risk that FERC may not address significant and impactful public comments in the environmental document or final order.
- **Data Integrity:** We identified data integrity issues with FERC’s workload tracking systems used to track specific information about natural gas certification applications, such as key milestones, and to respond to internal and external inquiries. Specifically, we found concerns with the completeness, accuracy, and consistency of workload tracking data extracted from the system; however, nothing came to our attention to indicate that this prohibited FERC from meeting its key milestones or completing its overall processing of those applications we reviewed.

The process transparency and public access issues that we identified above occurred, in part, because FERC had not specifically designed its public-facing systems for use by the general public. For example, although available to the general public, eLibrary had been designed for use by practitioners, the legal community, and other stakeholders. Further, FERC officials did not believe that a formal stakeholder comment tracking process was necessary, stating that it might be time consuming and duplicative of staff’s current efforts. Finally, FERC officials indicated that data integrity issues occurred because the workload tracking system had not kept up with the requirements of the natural gas certification process and staff had not always input information consistently.

While nothing came to our attention to indicate that natural gas certification applications had been inappropriately approved or disapproved, FERC can take steps to improve aspects of the natural gas certification process. We made recommendations designed to improve FERC’s natural gas certification process, thereby enhancing the public’s ability to meaningfully participate in the process and ensure that the process is more efficiently and effectively executed.

MANAGEMENT RESPONSE

Management concurred with the report’s recommendations and indicated that it had either initiated or planned corrective actions to address the issues identified in the report. Management’s comments are included in Appendix 3.

cc: Deputy Secretary
 Chief of Staff
 Executive Director, Federal Energy Regulatory Commission

THE FEDERAL ENERGY REGULATORY COMMISSION'S NATURAL GAS CERTIFICATION PROCESS

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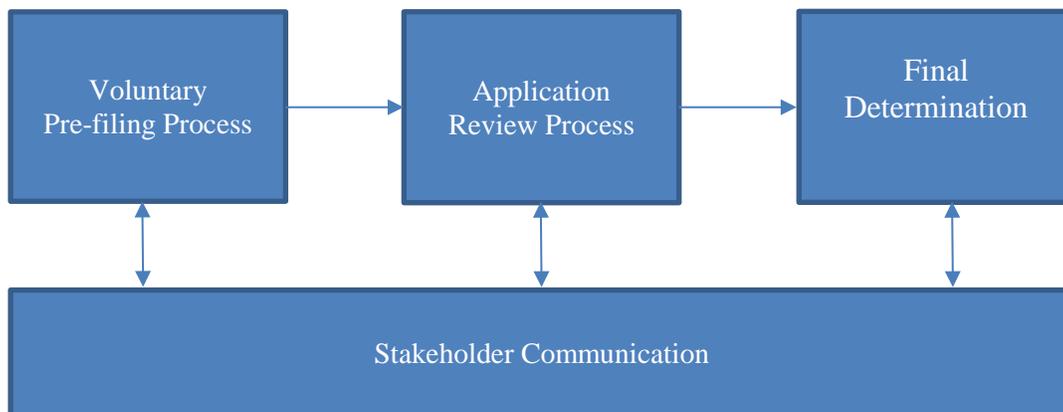
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THE FEDERAL ENERGY REGULATORY COMMISSION'S NATURAL GAS CERTIFICATION PROCESS

BACKGROUND

The Federal Energy Regulatory Commission (FERC) is an independent agency that regulates the Nation's natural gas industry under authorities granted by the *Natural Gas Act of 1938*, the *Energy Policy Act of 2005* (EPAAct 2005), and other statutes¹. FERC is composed of up to five Commissioners who are appointed by the President with the advice and consent of the Senate. Commissioners serve 5-year terms and have an equal vote on regulatory matters. Under Section 7 of the *Natural Gas Act*, companies seeking to build or extend interstate natural gas pipelines must first obtain certificates of public convenience and necessity from FERC. FERC's natural gas certification process, which culminates in a certificate of public convenience and necessity, balances the public benefits against the potential adverse consequences of any application for new pipeline construction. The application process can be complex and involves multiple FERC offices as well as a variety of Federal, state, and local stakeholders². Generally, the natural gas certification process includes one optional phase and two required phases: (1) voluntary pre-filing process, (2) application review process, and (3) final determination. (See Appendix 4). Each of these phases provide opportunities for communication with stakeholders.



PRE-FILING PROCESS

Applicants can elect to participate in a voluntary pre-filing process that FERC designed to increase the efficiency of the natural gas certification process and ensure timely determinations regarding natural gas applications. FERC developed the pre-filing process to allow applicants to better engage stakeholders for the purposes of identifying and mitigating potential issues at the earliest stages of a project. Applicants usually request participation in the pre-filing process 7 to

¹ Other statutes include the *Natural Gas Policy Act of 1978*, *Alaska Natural Gas Pipeline Act of 2004*, *Federal Power Act*, *Alaska Natural Gas Transportation Act of 1976*, *Outer Continental Shelf Lands Act*, and *Natural Gas Wellhead Decontrol Act of 1989*.

² Stakeholders include, but are not limited to, potentially affected landowners; nearby residents; concerned citizens; elected representatives; Federal, state, and local government officials; non-governmental organizations (local or national advocacy groups and chambers of commerce, etc.); Native American tribes; community leaders; and the media.

8 months prior to filing an application. Under 18 CFR, Section 157.21 *Pre-filing Procedures and Review Process for LNG Terminal Facilities and Other Natural Gas Facilities Prior to Filing of Applications*, once the pre-filing request is approved by FERC and a pre-filing number has been assigned, the applicant is required to follow six steps: (1) notify all affected landowners about the planned project, (2) facilitate the identification and resolution of issues, (3) conduct site visits, (4) examine alternatives, (5) meet with agencies and stakeholders, and (6) conduct public information meetings.

APPLICATION REVIEW PROCESS

Regardless of whether or not an applicant completes the pre-filing process, the applicant must file a formal application with FERC. FERC acknowledges receipt of the application by publicly issuing a Notice of Application, which identifies the company and pipeline project seeking FERC's authorization. In addition to the notifications sent to the stakeholders during the voluntary pre-filing process, within 3 business days following the issuance of the Notice of Application, an applicant is required to make a good faith effort to notify all affected stakeholders that the application requesting a certificate of public convenience and necessity has been filed. This notification includes providing a copy of the Notice of Application, project information, and the most recent edition of FERC's landowner pamphlet "*An Interstate Natural Gas Facility on My Land? What Do I Need to Know?*" This pamphlet provides information to landowners on FERC's procedures, landowner rights, how the location of pipelines and other facilities are decided, and safety and environmental issues.

FERC conducts the application review process by evaluating the following information: (1) project need; (2) economic impacts on existing customers, existing pipelines, or landowners and communities affected by the new pipeline; (3) terms and conditions for service, including rates and tariff issues; (4) engineering information; and (5) the environmental impact of proposed actions as required by the *National Environmental Policy Act* (NEPA). A NEPA analysis includes evaluating the impact on resources, such as soils, water, wetlands, vegetation, and fisheries; alternatives; and compliance with other applicable environmental statutes. This process is led by FERC's Office of Energy Projects, Division of Pipeline Certificates, which performs the case manager function by working closely with other Office of Energy Projects staff and additional offices within FERC. Our audit focused on the functions and oversight performed by the Office of Energy Projects; however, we also reviewed the general functions of the other offices involved. Specifically, the following FERC offices generally perform simultaneous reviews of certain aspects of the application (see Appendix 4 for details):

- Office of the General Counsel reviews legal and policy issues.
- Office of Enforcement handles the accounting and cost aspects of the project.
- Office of Energy Market Regulation reviews the project if it is determined that rate and tariff issues are included.
- Office of Energy Projects performs both environmental and non-environmental reviews and analyses.

FERC considers public comments in its analyses and typically issues its analyses for further public comment once the staff has completed its work. After the reviews have been completed, the Office of the General Counsel prepares a final order that includes subject-area inserts prepared by the other FERC offices. The final order is then delivered to the FERC Commissioners for their consideration.

FINAL DETERMINATION

The process for making the final determination as to whether natural gas pipeline applications should be approved or denied is a process that weighs public benefit versus adverse impacts. Based on the results of the application review process, the Commissioners decide whether to approve or deny an application and what conditions or terms must be completed by the applicant prior to construction and during operation. The final determination is made based on a vote of the Commissioners. If the application is approved by a majority of the Commissioners, FERC issues a final order granting a pipeline certificate of public convenience and necessity. After the final order is issued, stakeholders that have intervened in the proceeding³ have the right to request a rehearing, which is conducted by FERC. Additionally, FERC decisions can be appealed in the circuit court of appeals of the United States for any circuit wherein the natural gas company to which the order relates is located or in the United States Court of Appeals for the District of Columbia. Once the applicant has taken actions to satisfy the pre-construction terms and conditions of the certificate or final order, FERC can issue a Notice to Proceed with construction activities, and the applicant may transition into the construction phase of the project. If a project has a pending appeal, a company can continue project construction, unless a construction stoppage is specifically ordered by the court.

STAKEHOLDER COMMUNICATION

FERC maintains public-facing systems for disseminating information to stakeholders related to the natural gas pipeline certification process. The public can access FERC's website to obtain information about the natural gas certification process as well as the other industries regulated by FERC, such as electric, hydropower, and oil. The eLibrary system is FERC's publicly available document repository. Accessible through the Internet, eLibrary includes both FERC policy documentation as well as project-specific documents issued and received by FERC across all industries it regulates. Project-specific documentation may include notices, environmental reviews, stakeholder comments, and final orders. Users of eLibrary may subscribe to receive email notifications whenever a document is added to the system for a specific project. Official parties to each proceeding are also provided email notifications. In addition to information maintained on its public-facing systems, FERC publishes and mails notices, environmental documents, and project update brochures to affected landowners and other interested stakeholders. FERC also provides notices to the public through publication in the Federal Register. The Federal Register, administered jointly by the National Archives and Records Administration and

³ Stakeholders that are designated as "intervenor" can become parties to a proceeding and have the right to request a rehearing of FERC orders to seek relief of final agency actions in the circuit court of appeals of the United States for any circuit wherein the natural gas company to which the order relates is located or in the United States Court of Appeals for the District of Columbia.

the U.S. Government Publishing Office, is the official daily publication for rules, proposed rules, and notices of Federal agencies and organizations. FERC uses the Federal Register to publish project notices, to issue final orders, and to advertise scoping and comment meetings conducted throughout the natural gas certification process.

DETAILS OF FINDINGS

Nothing came to our attention to indicate that FERC had not generally performed the natural gas certification process in accordance with applicable laws, regulations, policies, and procedures, including the *Natural Gas Act of 1938* and EPAAct 2005. However, as discussed later in the report, we did find that FERC's natural gas certification process may have not met the intent of the transparency requirement detailed in Executive Order 13604 *Improving Performance of Federal Permitting and Review of Infrastructure Projects* and that FERC had not published Notices of Schedule for Environmental Review (Notice of Schedule) in the Federal Register, as required by 18 CFR, Section 157.9 *Notice of Application and Notice of Schedule for Environmental Review*, for a 9-year period. During our review of the overall certification process and a sample of closed natural gas applications, nothing came to our attention to indicate that FERC had not performed its due diligence in reviewing and making determinations on natural gas certification applications based on a consideration of the public benefits and adverse impacts of the proposed projects.

In addition, although there were no specific statutory or regulatory deadlines for processing natural gas certification applications, we found that FERC generally adhered to an internally established timeliness performance measure. Specifically, FERC set up a measure to issue 90 percent of natural gas orders within timelines it established for different categories of applications.

Finally, we found that FERC obtained, considered, and aggregated stakeholder input throughout the natural gas certification process. Stakeholders were given multiple opportunities to provide input regarding an application for a proposed natural gas project. Opportunities included, but were not limited to, (1) participation at the applicant's open houses held to publicly and formally introduce the project, (2) participation in FERC's NEPA scoping process designed to gather stakeholder comments and questions on the project, and (3) submission of comments on environmental and non-environmental issues associated with the project. We noted that FERC, by aggregating incoming stakeholder comments, had taken actions to address many comments on natural gas applications we selected for review. However, as will be discussed in more detail later in this report, FERC did not have documented processes or a consistent methodology for tracking the disposition of stakeholder comments, as indicated by the Executive Order 13604 to provide a "transparent, consistent, and predictable path for both project sponsors and affected communities." In the absence of a consistent process to track the disposition of stakeholder comments, we did not perform a reconciliation to verify the extent to which stakeholder comments were considered, aggregated, and reflected in the environmental documents or final orders that are issued to grant or deny applications.

While we did not find any concerns that called into question the appropriateness of decisions FERC made on natural gas certification applications, we identified four areas for improvement that, if addressed, could aid FERC in more efficiently and effectively managing its natural gas certification process. These areas included:

- Process Transparency;
- Public Access to FERC Records;
- Tracking Stakeholder Comments; and
- Data Integrity.

Process Transparency

We found that FERC had not ensured that its natural gas certification process was fully transparent to stakeholders. Specifically, while there are a number of ways that FERC informs stakeholders about the natural gas certification process, such as scoping meetings, the FERC website, and the landowner pamphlet, FERC had not provided adequate information on its website or in the landowner pamphlet distributed to the public. FERC officials within the Office of Energy Projects stated that they did not believe FERC was subject to Executive Order 13604, noting that FERC was not specifically listed as a member of the Steering Committee described in the Executive Order. While we agree that the responsibilities of the Steering Committee, as defined by the Executive Order, do not apply to FERC, we believe that the Executive Order's clearly defined intent of improving the performance of Federal permitting and review of infrastructure projects (specifically within the natural gas industry, which is a key aspect of FERC's mission) would apply to FERC's natural gas certification process. Further, in discussing the draft report with FERC, an official from its Office of the General Counsel noted that FERC's natural gas certification process would fall under the Federal permitting and review processes addressed in the Executive Order. The absence of sufficient information on how the process works may hinder the public's ability to fully participate in the process and may have not met the intent of the transparency requirements of the Executive Order. Per the Executive Order, Federal permitting and review processes must provide for transparency and accountability by using cost-effective information technology to collect and disseminate information about individual projects and agency performance so that the priorities and concerns of all citizens are considered. It is important to ensure transparency regarding the steps taken during FERC's review of natural gas applications to allow the public to understand and navigate the process.

FERC's Website

We found that the natural gas certification section of FERC's website did not contain a sufficient explanation of the entire process, thereby potentially hindering FERC's ability to adhere to the transparency requirements of Executive Order 13604. Specifically, FERC's website did not contain a step-by-step flowchart or narrative explaining all the steps taken by FERC during the natural gas certification process to allow the public to understand and actively participate in the process. While the natural gas section of the website provided a guide for accessing electronic information at FERC, it included information that is used across all FERC-regulated industries rather than specifying the public-facing systems that an interested party can use throughout the

natural gas certification process. Additionally, the guide did not specify when or how these systems are to be used. Furthermore, the natural gas section of FERC's website did include flowcharts depicting the environmental review processes within the Office of Energy Projects; however, it did not address other important aspects of FERC's overall review process, such as rate and tariff analyses that are unrelated to environmental reviews, nor did it include associated opportunities for stakeholder involvement. A stakeholder must navigate outside of FERC's natural gas process section of the website in order to piece together certain aspects of the process and the offices involved. A comprehensive diagram explaining the entire natural gas certification process was not available on FERC's website⁴.

FERC officials recognized that FERC's website did not have a single place that collectively explained all of the offices or steps involved with FERC's natural gas certification process. Officials reiterated that the design of FERC's website had been an issue. Officials indicated that the information related to the process is limited on the website because most of the questions received from the public were related to the environmental review process. As a result, this was where the emphasis and/or priority was placed. However, by not including all of the offices or steps involved with FERC's natural gas certification process on the website, a stakeholder's ability to understand and meaningfully participate in the process may be diminished.

Additionally, it was acknowledged by FERC officials that the public would benefit from the website including more information about the entire process. To its credit, during our audit, FERC placed a video titled "What is FERC?" on its website to provide a high-level overview of FERC's operations. Although the video provided a general overview of the pipeline certification process and contact information regarding general support for members of the public wishing to get involved in the process, it did not directly address concerns and/or rights of landowners who may be affected by the process.

Landowner Pamphlet

We found that the landowner pamphlet "*An Interstate Natural Gas Facility on My Land? What Do I Need to Know?*" which is used as a method of outreach by FERC, did not sufficiently explain key aspects of the certification process. Specifically, while it provided general information regarding the certification process, such as an explanation of the environmental portion of the review process and how stakeholders may comment at various stages of this process, it did not include information regarding:

- How the status of a pending application can be obtained;
- Contact information for the office within FERC that is most involved with the certification process;

⁴ As part of our audit, we gained an understanding of the full process for processing natural gas facility applications. We worked with FERC officials to develop a detailed diagram to ensure a comprehensive depiction of the natural gas certification process. The diagram, included in Appendix 4, documents three key processes in the application review process: (1) pre-filing, (2) formal application review, and (3) development and issuance of FERC's final order.

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- Definitions for terms in the glossary pertaining to FERC’s natural gas certification process; and
 - The non-environmental review portion of the certification process.

FERC’s landowner pamphlet is intended to address some of the basic concerns of landowners. According to 18 CFR, Section 157.6 *Applications; General Requirements*, “the applicant shall make a good faith effort to notify all affected landowners” via “the most recent edition of the Commission’s pamphlet that explains the Commission’s certificate process and addresses the basic concerns of landowners.” Per FERC officials, the “*What Do I Need to Know?*” pamphlet is meant to fulfill this requirement for natural gas certificate applicants and is also used to inform stakeholders affected by other FERC processes. FERC does not provide the pamphlet directly to applicants but makes it available for free download on its website so that applicants can get copies to provide to affected landowners directly. Printed copies may also be purchased. FERC officials stated that the issues we identified with the pamphlet occurred because it was tailored to frequently asked questions from the public, which may not include all aspects of FERC’s natural gas certification process. However, by not including all of the offices or steps involved with FERC’s natural gas certification process within the pamphlet, a stakeholder’s ability to understand and meaningfully participate in the process may be diminished. Additionally, officials recognized that additional information could improve the usefulness of this method of outreach.

Public Access to FERC Records

The design, search functionality, and limited ease of use of eLibrary, FERC’s publicly available document repository, potentially limited stakeholders’ ability to access FERC policies and documents related to specific project applications. As a result, FERC may have not met the intent of the transparency requirements established in Executive Order 13604. Specifically, to execute the review processes with maximum efficiency and effectiveness, Federal agencies must provide transparency by using cost-effective information technology to collect and disseminate information. Additionally, for a period of 9 years (2006-2015), FERC did not post Notices of Schedule in the Federal Register to notify stakeholders, including other agencies issuing Federal authorizations, of FERC’s environmental review schedules, as required by 18 CFR, Section 157.9 *Notice of Application and Notice of Schedule for Environmental Review*. During the course of this audit, FERC officials identified and corrected this issue. These issues could diminish the ability of stakeholders to effectively participate in the natural gas certification process.

Design of eLibrary

We found it difficult to search for FERC policies and orders within eLibrary and challenging to ascertain the status of pending natural gas project applications. In several cases, we were unable to locate information in eLibrary without the direct assistance of FERC officials. For example, we were unable to locate within eLibrary a key FERC order that addressed its policy on stakeholder participation, despite employing search criteria such as the exact name, date, and document type. After we informed a FERC official of the difficulties we were experiencing, we

were told that eLibrary was having issues with its search functionality. As a result, this order had to be located on eLibrary by FERC officials who then emailed the document and eLibrary link to us. Later in our audit, when we attempted to search for other orders in eLibrary, we were unable to locate several, despite being provided with order numbers and titles by FERC officials. As a result, FERC officials had to provide additional information to us, such as the accession numbers, unique document identifiers⁵, which finally allowed us to locate the orders in eLibrary.

Additionally, we found that it is difficult for stakeholders to ascertain the status of pending natural gas project applications. The eLibrary system is the only place where a project's status can be verified by a stakeholder; project status information in the form of a "snapshot" or dashboard is not available on FERC's website or any other public-facing systems. Per FERC officials, FERC does not have the ability to provide a "snapshot" or dashboard of the status of current projects because FERC's current internal project management systems are not currently configured to generate consolidated reports to facilitate the overall tracking of project milestones and current statuses. Although not required, a "snapshot" would allow the public to more readily determine the status of an application. Currently, to obtain the status of an application, individuals must search eLibrary and locate the pertinent project-related notices that have been issued to date. Based on the sequences of notices issued and the understanding of where the notices fall in FERC's step-by-step process, individuals can then determine where the pending application is in the review process. However, without understanding the nature of the notices or the sequence in which they are issued during FERC's review process, it may be difficult for stakeholders, especially those who are not familiar with eLibrary, to determine the status of an application.

Due to these eLibrary system limitations, stakeholders' ability to effectively access specific project-related electronic documents received and issued by FERC could be negatively impacted. While we acknowledge that project-specific documentation exists in eLibrary, if the stakeholders are unable to access this information, FERC may not be meeting the intent of Executive Order 13604. FERC officials acknowledged that eLibrary is the only means to obtain detailed information on the status of an application. Stakeholders who are not subscribed to eLibrary to receive email notifications or are not intervenors must perform additional steps to obtain the status of an application because there is no simple method for checking the status.

Former FERC Chairman, Norman Bay, publicly acknowledged issues with eLibrary during testimony before the House of Representatives, Subcommittee on Energy and Power in December 2015. Specifically, he acknowledged that it can be difficult for a member of the public to find the right document on eLibrary. When interviewed during our audit, former Chairman Bay and other former and current Commissioners consistently stated that eLibrary was in need of improvement. FERC officials indicated that the public may find eLibrary challenging to use because the system was designed for practitioners, the legal community, and stakeholders, rather than specifically for the general public.

⁵ The accession numbers are located within publicly available FERC documents located on eLibrary. However, for the purposes of finding a specific document within eLibrary by the accession number, FERC officials had to provide the number to do so.

Further, the eLibrary search functionality is complex, and there is a lack of available training for the public. Per FERC officials, FERC is currently making upgrades to eLibrary that include enhancements to the reliability and resiliency of the system; however, these upgrades are not intended to improve the ease of use of the search function or the search results generated by eLibrary. Subsequent to the reliability and resiliency enhancements, FERC plans to address improvements to the search function.

During the 2015 hearing, former Chairman Bay expressed interest in the concept of a project dashboard where the public can see the pending application schedule established by FERC and the actions required to complete the application review process. A FERC official also stated to us their support for bringing this information together in one location on FERC's website. The *Fixing America's Surface Transportation Act* (FAST Act) directed Federal agencies, including FERC, to report performance schedules for all new infrastructure projects that meet certain criteria of size and complexity, using a standardized set of milestones. As a result, the Federal Infrastructure Permitting Dashboard was created as an online tool for Federal agencies, project developers, and interested members of the public to track the Federal government's permitting and review process for large or complex infrastructure projects. The Federal Infrastructure Permitting Dashboard includes a project's title, lead agency, sector, project types, and a detailed status or milestones. Fifteen of FERC's projects were identified as "covered" projects under the FAST Act and were listed on the Federal Infrastructure Permitting Dashboard, which is maintained by the Department of Transportation. The general public can find a link to the Federal Infrastructure Permitting Dashboard on the Federal Statutes page of the FERC website.

Posting Notices of Schedule in the Federal Register

FERC had not posted Notices of Schedule in the Federal Register, as required, to notify stakeholders, including other agencies issuing Federal authorizations, of FERC's planned schedule for completion of environmental reviews for a 9-year period from 2006 to 2015. The Federal Register is the official daily publication for rules, proposed rules, and notices of Federal agencies and organizations. Per 18 CFR, Section 157.9 *Notice of Application and Notice of Schedule for Environmental Review*, Notices of Schedule must be published in the Federal Register for any application that requires an Environmental Assessment or an Environmental Impact Statement⁶. The Notice of Schedule, if required, provides FERC's planned schedule for issuance of an Environmental Assessment or the final Environmental Impact Statement for a project. In addition, the notice provides specific dates and deadlines related to the certification process. Per FERC officials, notices are specifically targeted to agencies responsible for other Federal authorizations and were published in eLibrary and mailed to all affected landowners and other stakeholders. However, by not posting the Notice of Schedules, FERC may have not fully notified the public of key project information.

This oversight occurred because the Office of Energy Projects, whose responsibility is to complete Notices of Schedule for certain projects, had not identified the notices as documents that should be signed by the Commission Secretary and sent to the Federal Register for publication. During our application review, we found that the notices had not been posted since

⁶ FERC is to issue a Notice of Schedule within 90 days of the Notice of Application. Per FERC officials, if the environmental document is issued within those 90 days, FERC does not produce a Notice of Schedule.

the inception of the EPOA 2005 requirement put into place in 2006. Subsequent to our review, Office of Energy Projects officials informed the audit team that they had discovered in November 2015 that notices were not being posted in the Federal Register. Once the issue was uncovered, the Office of Energy Projects officials informed us that they had revised their procedures regarding the notices and affirmed that all notices have since been published in the Federal Register.

Tracking Stakeholder Comments

We found that FERC did not have documented processes or a consistent methodology for tracking incoming stakeholder comments regarding a proposed natural gas project. In discussing this issue with several case managers responsible for ensuring that incoming stakeholder comments are addressed by relevant offices within FERC, we noted that case managers were not following the same methodology to track and aggregate this information. While FERC's Statement of Policy indicates that the analytical process that weighs public benefit versus adverse impacts will take stakeholder concerns into consideration when making a decision regarding public convenience and necessity, this policy does not specifically dictate how FERC must analyze and keep track of stakeholder comments received. In the absence of a process for tracking resolution of stakeholder comments, we did not determine whether or to what degree comments received by FERC were considered, aggregated, and reflected in the environmental documents or final orders for the certificate applications we reviewed.

We noted that FERC had not implemented a stakeholder comment tracking system despite identifying it as an industry best practice. In FERC's *Suggested Best Practices for Industry Outreach Programs to Stakeholders*, FERC suggests that companies should use a system for tracking comments and questions and ensuring timely responses. This document was used to present best practices for industry and highlight the tools FERC believes can be used to effectively engage stakeholders in the application process for siting, construction, and operation of interstate natural gas facilities and liquefied natural gas terminals.

The lack of a consistent methodology for tracking incoming stakeholder comments occurred because FERC officials did not believe there was a need to document its processes or apply a consistent methodology for tracking stakeholder comments. FERC officials mentioned that a formal tracking system might be time consuming and duplicative of staff's current efforts. Officials also indicated that they rely on the rehearing process as a check on the staff's review of comments. Per FERC officials, "if a party feels that the Commission has failed to address a comment, it can inform the Commission of its concern." While this represents a potential opportunity for recourse on the part of the public, it does not provide a means by which FERC can ensure public concerns are consistently taken into account and instead relies on the tenacity of stakeholders to have their voices heard. Finally, FERC officials noted that they rely on eLibrary for intake of stakeholder comments. This system, however, only receives stakeholder comments and does not have a mechanism that explains how the comment was processed or how FERC considers an individual comment in terms of outcome⁷.

⁷ Per FERC officials, responses to stakeholders' environmental comments are summarized in the Environmental Assessment or Environmental Impact Statement and in the final orders. Specifically, Environmental Assessments

The lack of a documented and consistent process for tracking stakeholder comments could affect FERC’s ability to provide a “transparent, consistent, and predictable path for both the project sponsors and affected communities,” as intended by the transparency requirements established in Executive Order 13604. While we did not identify any significant public comments that were not taken into consideration, the lack of a documented and consistent process for tracking incoming stakeholder input exposes FERC to potential inconsistency and unpredictability across multiple offices, and it also increases the risk that FERC may not address significant and impactful public comments in the environmental document or final order. Transparency in addressing stakeholder comments becomes increasingly important given the public and Congressional scrutiny of the permitting process.

Data Integrity

We found data integrity issues with the workload tracking systems used by FERC to help facilitate the natural gas certification process. FERC’s Activity Tracking Management System (ATMS), one component of the workload tracking systems, is the internal database that tracks application and project milestones from the date filed to the date the corresponding order is issued. Per FERC officials, in addition to ATMS, other systems need to be used because ATMS does not track all milestones performed during the natural gas certification process. During the course of our audit, FERC officials provided us with data extracted from the ATMS, but they expressed some concerns regarding the integrity of this data. Specifically, we noted the following issues with the completeness, accuracy, and consistency of the data from the ATMS:

- **Incomplete Data:** The ATMS data and reporting function did not allow FERC staff to compile a complete list of closed applications since 2009; the population we requested from which to select a sample of closed applications⁸. To compile a complete list, FERC’s Information Technology department had to develop a special code to search the data from ATMS, import data from a separate project tracker spreadsheet, and have FERC staff manually research information from eLibrary. This resulted in what FERC officials indicated was a listing of the closed natural gas certification applications since 2009; however, the compilation of the listing required time and resources to perform a basic function of a project tracking system.
- **Inaccurate Data:** The list of closed applications contained what FERC officials described as “suspect data.” For example, for one of the applications, a mileage entry showed over

often use a summary table or narrative and Environmental Impact Statements present a more detailed side-by-side comment/response matrix as an appendix.

⁸ To provide context for our request, we worked with FERC officials to define and extract closed applications, with the intent to not interfere with ongoing application reviews. Closed applications were defined by FERC officials as applications in which (1) the application was withdrawn by the applicant, (2) the application was dismissed by FERC staff, or (3) FERC issued an order regarding the application. Applications with a current on-going rehearing request were not included in this list. We asked FERC to pull closed applications dated after January 1, 2009, which met its definition.

1,300 miles of pipe; however, according to FERC officials, there has never been a pipeline project of that length brought before FERC. FERC officials stated that staff would need to vet the information line-by-line in order to address all of the inaccuracies⁹.

- **Inconsistent Data**: Certain information fields within the ATMS contained variations and inconsistencies. As described by FERC officials, there are differences in entries for the projects in the information fields. For example, a field describing if a natural gas application was approved or rejected could contain 12 different possible entries in the system, potentially making it difficult for trending or reporting. As a result, due to redundant and inconsistent information in the system, FERC officials indicated they found it necessary to manually review and pare the responses down regarding the status of an application prior to providing the list to us. Further, descriptions of the type of environmental review required for individual natural gas applications, such as environmental assessments or environmental impact statements, were not always standard or consistent.

We also noted that FERC relies on data within the ATMS to help determine whether or not FERC orders regarding natural gas pipeline applications were issued within established timeframes. When asked, FERC officials acknowledged that, because an independent analysis of the ATMS data must be performed, they do not believe the current ATMS configuration allows for the most efficient and effective process for determining whether timeliness performance measures are met.

FERC officials indicated that the ATMS data issues occurred because the system had not kept up with the requirements of the natural gas certification process. Specifically, FERC officials noted that the ATMS was not designed to track all the pertinent milestones pertaining to the application review process, and FERC staff have not always input information consistently. FERC officials stated, “We recognize we have a staff training issue that needs to be addressed in order to get more consistent and complete [data] input by staff into the ATMS system.” In addition, regarding the timeliness performance measures, officials stated, “Our pending request to the FERC Chief Information Officer to add additional data fields and milestones, and provide for better staff training, should help alleviate future data issues.”

As a result of the limitations and deficiencies of the ATMS data management and report capabilities, FERC’s ability to efficiently and effectively manage the process and accurately assess its adherence to its internal timeliness performance measures may be inhibited. Erroneous and questionable data in the ATMS may also make it difficult for FERC officials to efficiently and effectively respond to inquiries from the Chairman, Commissioners, Congress, and other stakeholders regarding specific natural gas applications. Because FERC deemed this data to be unreliable, staff are assigned to review the information obtained from the ATMS to ensure that it is up-to-date by verifying against prior FERC-issued documents maintained in eLibrary. In addition, because the system does not have the capability to obtain the status of an application through the existing milestones and other data, FERC would not be able to use the ATMS data

⁹ We did not request FERC to fully vet the information because the data was only used to select a sample of applications for our audit review. The data integrity issues did not affect our sample as it was judgmental and, therefore, could not be extrapolated to the entire population of applications.

for a dashboard, if implemented. Per FERC officials, even though the system does not currently have the ability to track certain internally established milestones, this does not prohibit the milestones from being met by FERC. Accordingly, nothing came to our attention to indicate that FERC was not meeting its milestones or completing the overall processing of those applications we reviewed. As confirmed by FERC officials, modifications and improvements to the system would help with efficiency and internal tracking by providing the complete history of aspects of FERC's review for a particular project.

Impact

The quality of our Nation's infrastructure depends on Federal permitting and review processes, such as FERC's natural gas certification review process. These processes ensure that projects are designed, built, and maintained in a manner that is consistent with protecting our public health, welfare, safety, national security, and environment. In considering approval for projects, FERC must determine whether the public benefit of the project outweighs the project's adverse impacts, a determination that should involve stakeholders, including the public, to the greatest extent possible.

Responding to the concerns we identified during our audit would improve FERC's ability to efficiently and effectively manage its natural gas certification process and the public's ability to understand and meaningfully participate in the process. As a result, the public's perception of the fairness and equity of the process could be improved.

RECOMMENDATIONS

To improve the overall transparency of FERC's natural gas certification process, thereby enhancing the public's ability to meaningfully participate in the process, and to ensure that the process is efficiently and effectively executed in accordance with relevant laws and regulations, we recommend that the Chairman direct appropriate FERC officials to:

1. Evaluate ways to improve FERC's public-facing systems and outreach pamphlet to ensure that adequate information is provided to stakeholders on FERC's processes and status of project applications.
2. Develop and provide educational outreach and training to further facilitate the stakeholders' ability to use FERC's eLibrary.
3. Develop controls to facilitate periodic review of internal policies to ensure all required documents are posted to the Federal Register.
4. Document procedures for tracking incoming stakeholder input to allow for the consistent processing and disposition of comments and to ensure that comments are considered, aggregated, and reflected in the environmental document or final order.
5. Perform the ATMS upgrades and training to address the limitations and deficiencies of the system.

MANAGEMENT RESPONSE

Management concurred with the report's recommendations and stated that it had either initiated or planned corrective actions to address the issues identified in the report. Management stated that it had recently produced three videos aimed at explaining to the public what FERC does and how it operates, how to file comments with FERC, and the FERC meeting process. Management plans to modernize the FERC website to improve its usability, content, navigation, and design. The website will also include a comprehensive flowchart that specifically addresses all components and program offices involved in the processing of an application for a natural gas pipeline, as well as an updated landowner brochure. Management also plans to improve the eLibrary search features and will provide stakeholder user guides and other communications to facilitate its use. Management stated that it will implement controls to ensure Federal Register Noticing requirements are consistently carried out. Further, management stated that it will develop procedures to ensure that all staff are consistently reviewing and considering comments received on docketed natural gas pipeline proceedings. Finally, management stated that it will upgrade the existing ATMS reports and will conduct staff training to ensure that workload tracking data is properly input and maintained. Management's comments are included in Appendix 3.

AUDITOR COMMENTS

Management's comments and proposed actions are responsive to our findings and recommendations.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

To determine whether the Federal Energy Regulatory Commission's (FERC's) natural gas certification process was performed in accordance with relevant laws, regulations, policies, and procedures, to include timeliness and stakeholder input.

Scope

This audit was conducted between October 2015 and May 2018 at FERC in Washington, DC. The scope was limited to FERC's certification process for natural gas pipelines, focusing on closed natural gas certificate applications, under Section 7 of the *Natural Gas Act of 1938*, submitted between January 2009 and October 2015. In addition, this audit focused on the functions and oversight performed by the Office of Energy Projects; however, we also reviewed the general functions of the other offices involved in FERC's natural gas certification process. Further, this audit was conducted under the Office of Inspector General project number A16HQ005.

Methodology

To accomplish our audit objective, we:

- Reviewed applicable laws and regulations pertaining to FERC's natural gas certification process.
- Reviewed prior reports issued by the Office of Inspector General and the Government Accountability Office.
- Interviewed key FERC personnel, including the prior Chairman, prior and current Commissioners, and staff from involved offices.
- Tested closed natural gas certification applications to determine if the natural gas applications were processed by FERC in a timely manner; with opportunities for stakeholder input; and in accordance with relevant laws, regulations, policies, and procedures. To do so, we judgmentally selected a sample of 6 from a total of 339 closed natural gas certificate applications from January 2009 to October 2015 (Section 7 filings only)¹. The sample selection was based on (1) applications electing pre-filing and rehearing request; (2) final disposition of applications, such as approved, denied, or withdrawn; (3) period of FERC's review duration; and (4) other information that came to our attention. Because our sample was not statistical, we could not project our results to the population of applications.

¹ The data derived from the Activity Tracking Management System (ATMS) was deemed unreliable. The 339 may or may not be accurate.

- Analyzed the usability and functionality of FERC’s public-facing systems to obtain information related to FERC’s natural gas certification process and closed applications selected for review.
- Attended walk-throughs of FERC’s internal project management systems and performed reliability testing of data obtained from these systems.
- Consolidated FERC’s natural gas certification processes into a single flowchart using flowcharts publicly available and a flowchart created by FERC officials for the purposes of our audit (see Appendix 4).
- Reviewed information provided in FERC’s outreach pamphlet.

We conducted this performance audit in accordance with generally accepted Government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provided a reasonable basis for our findings and conclusions based on our audit objective. Accordingly, the audit included tests of controls and compliance with laws and regulations necessary to satisfy the audit objective. In particular, we assessed compliance with the *GPR Modernization Act of 2010* and found that performance measures had been established for the natural gas certification process. Because our review was limited, it would not necessarily have disclosed all internal control deficiencies that may have existed at the time of our audit. Finally, we conducted an assessment of computer-processed data relevant to our audit objective by comparing the data provided by the Activity Tracking Management System (ATMS) to source documents. We determined that the data was unreliable and addressed our concerns in the audit report. As a result, we were unable to perform additional analytical or trending analyses for our audit. We used the data to select a sample of natural gas applications to review. Our sample selection and the corresponding data for those applications was vetted with FERC officials to ensure accuracy.

Management waived an exit conference on May 7, 2018.

RELATED REPORT

The Government Accountability Office

Report on [*Pipeline Permitting - Interstate and Intrastate Natural Gas Permitting Processes Include Multiple Steps, and Time Frames Vary*](#) (GAO-13-221, February 2013). The Government Accountability Office found that both the interstate and intrastate natural gas pipeline permitting processes were complex and could involve multiple Federal, state, and local agencies, as well as public interest groups and citizens, and included multiple steps. Pipeline companies must also comply with various Federal and state environmental laws and regulations; however, in most of the 11 states that the Government Accountability Office reviewed, no one agency was charged with coordinating the implementation of these laws and regulations as Federal Energy Regulatory Commission was for the interstate process.

Officials from Federal and state agencies and representatives from industry and public interest groups told the Government Accountability Office that several management practices could help overcome challenges they associated with an efficient permitting process and obtaining public input: (1) ensure a lead agency is coordinating the efforts of Federal, state, and local permitting processes for intrastate pipelines, (2) ensure effective collaboration of the numerous stakeholders involved in the permitting process, (3) provide planning tools to assist companies in routing pipelines and avoiding sensitive environmental resources, (4) offer industry the option to fund contractors or agency staff to expedite the permitting process, and (5) increase the opportunities for public comments. The Government Accountability Office made no recommendations in this report. The Departments of Agriculture and Defense generally agreed with the findings, and the other agencies had no comments.

MANAGEMENT COMMENTS

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

OFFICE OF THE CHAIRMAN

DATE: May 2, 2018

MEMORANDUM TO: April G. Stephenson
Principal Deputy Inspector General
Office of Inspector General

FROM: Kevin J. McIntyre 
Chairman
Federal Energy Regulatory Commission

SUBJECT: Draft Audit Report on The Federal Energy Regulatory
Commission's Natural Gas Certification Process
IG – 302 (A16HQ005)

Thank you for the opportunity to comment on the draft report regarding the Commission's natural gas certification process. The management response to the specific recommendations, including a timeline for completion, is outlined in the attached enclosure. I appreciate your feedback on our processes and your suggestions to make them more transparent and navigable to our stakeholders and the general public.

If you have any questions, please contact our Audit Liaison at audit.liaison@ferc.gov.

Management Response to Draft IG Report
*Federal Energy Regulatory Commission's Natural Gas Certification Process
IG-302 (A16HQ005)*

Recommendation #1: Evaluate ways to improve FERC's public-facing systems and outreach pamphlet to ensure that adequate information is provided to stakeholders on FERC's processes and status of project applications.

Management Response: Concur

The Commission continuously strives to make improvements to our website and public brochures to allow the public to better understand and actively participate in the Commission's processes. Recently, the Commission has produced three videos aimed at explaining to the public what the Commission does and how it operates: an overview of FERC; an explanation of how to file comments with FERC; and an explanation of the Commission meeting process.

- The Commission will provide a comprehensive flowchart on www.ferc.gov addressing all of components and program offices involved in the processing an application for a natural gas pipeline on www.ferc.gov. The estimated completion date for this activity is September 2018.
- The Commission will also update its Landowner brochure and post it to www.ferc.gov. The estimated completion date for this activity is December 2018.
- As part of a larger, long-term effort, the Commission is also in the process of modernizing www.ferc.gov. The intent is to improve usability, content, navigation and design of the website, and to make it mobile-friendly. FERC plans to execute a contract for redesign of the website in summer 2018, with anticipated completion in 2019.

Recommendation #2: Develop and provide educational outreach and training to further facilitate the stakeholders' ability to use FERC's eLibrary.

Management Response: Concur

FERC plans to improve the eLibrary search features and will provide stakeholder user guides and other communications to facilitate its use. The estimated completion date for the improvements to eLibrary is December 2018. The timeline for completing the user guides and other communications will be developed after the eLibrary improvements are made.

Recommendation #3: Develop controls to facilitate periodic review of internal policies to ensure all required documents are posted to the Federal Register.

Management Response: Concur

The Commission will implement controls to ensure Federal Register Noticing requirements are consistently carried out. The estimated completion date for this activity is September 2018.

Recommendation #4: Document procedures for tracking incoming stakeholder input to allow for the consistent processing and disposition of comments and to ensure that comments are considered, aggregated, and reflected in the environmental document or final order.

Management Response: Concur

The Commission will develop procedures to ensure all staff are consistently reviewing and considering comments received on docketed natural gas pipeline proceedings. The estimated completion date for this activity is September 2018.

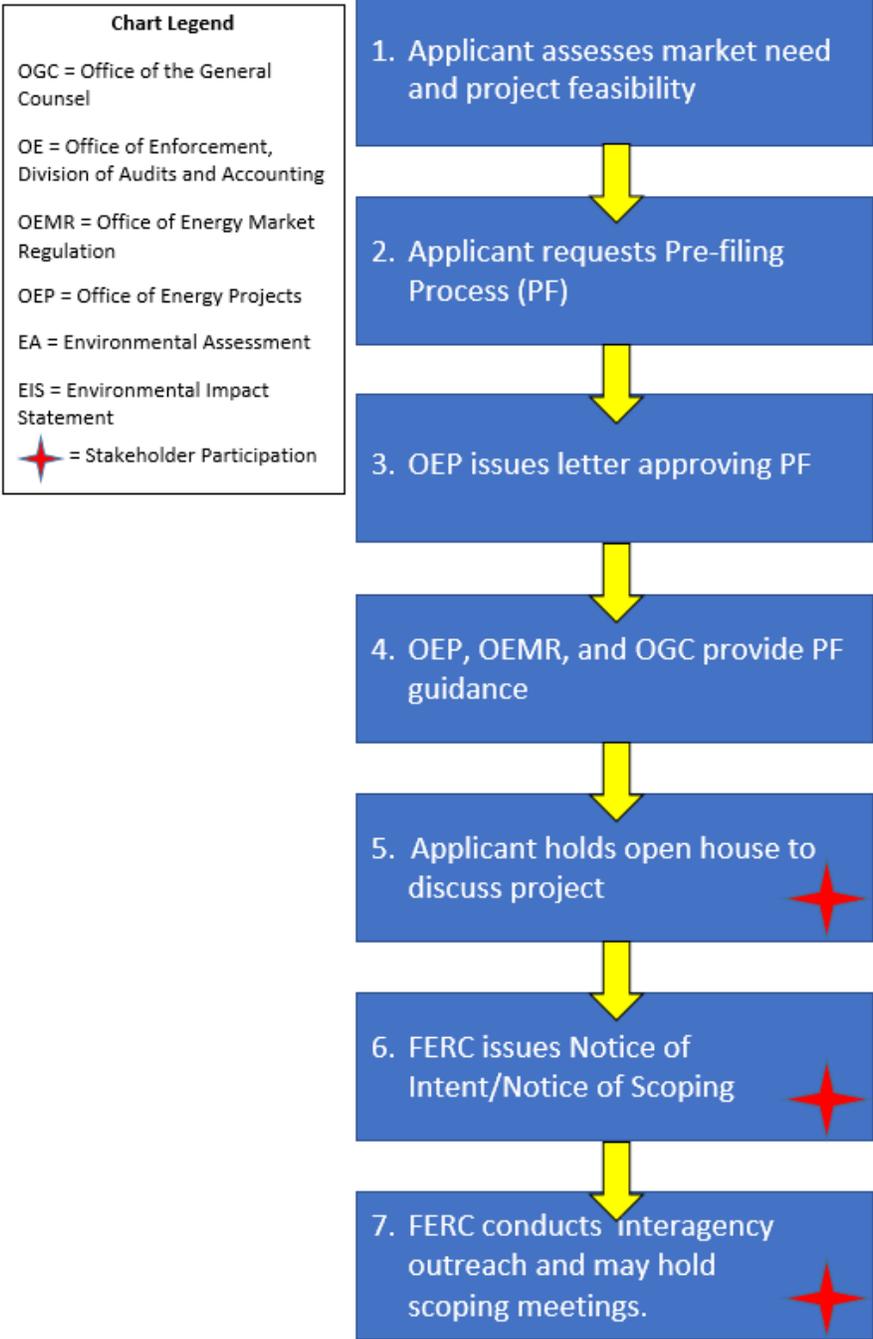
Recommendation #5: Perform the ATMS upgrades and training to address the limitations and deficiencies of the system.

Management Response: Concur

- The Commission will upgrade existing ATMS reports. The expected completion date for this is September 2018.
- The Commission's Office of Energy Projects will conduct staff training to ensure workload tracking data is properly input and maintained. The estimated completion date for this activity is September 2018.

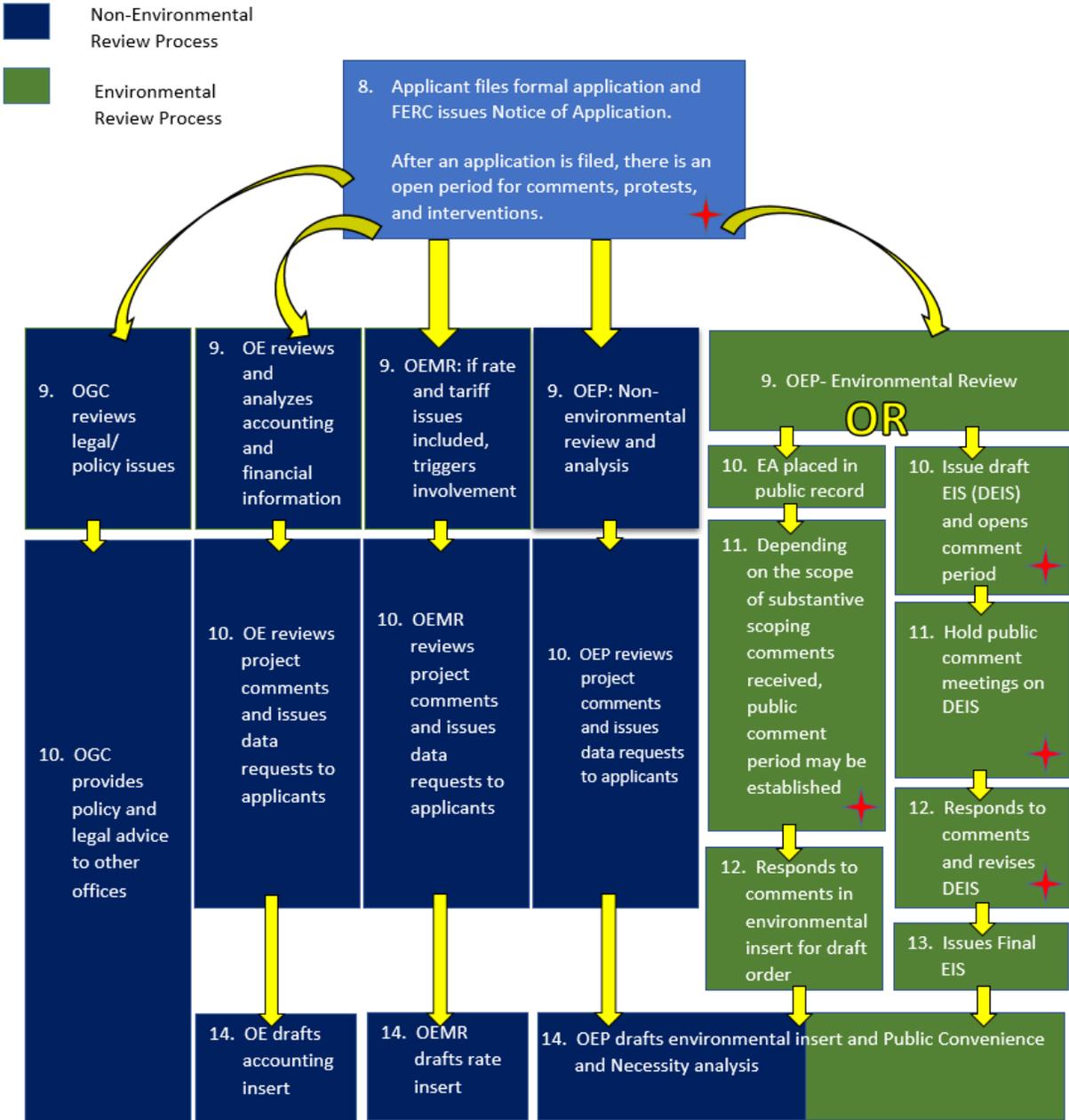
NATURAL GAS CERTIFICATION PROCESS¹

Pre-Filing Process



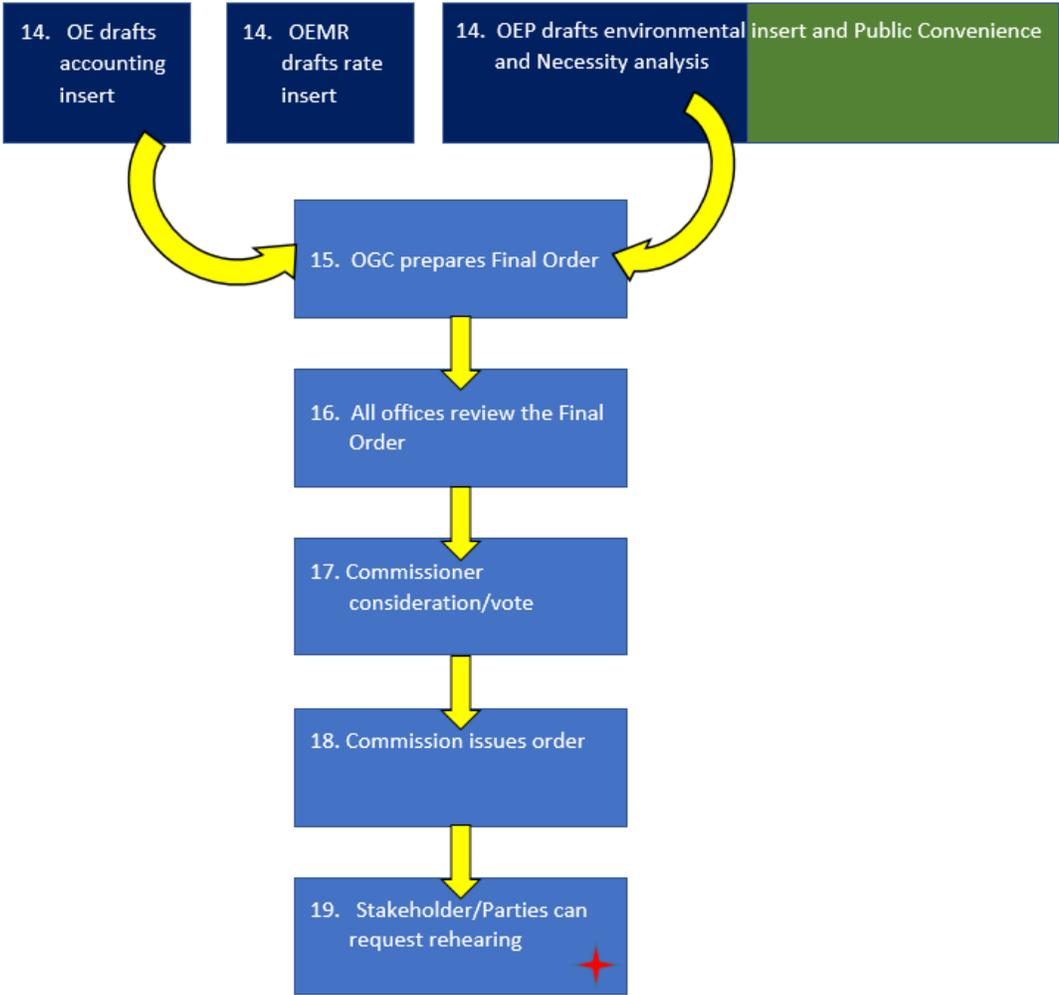
¹ As part of our audit, we gained an understanding of the full process for reviewing natural gas facility applications and, working with Federal Energy Regulatory Commission (FERC) officials, developed this detailed diagram of the natural gas certification process.

Application Review



Final Determination

- Non-Environmental Review Process
- Environmental Review Process



FEEDBACK

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Office of Inspector General (IG-12)
Department of Energy
Washington, DC 20585

If you want to discuss this report or your comments with a member of the Office of Inspector General staff, please contact our office at (202) 253-2162.