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Docket No. FS-2019-0010

NEPA Services Group
Attn: Ms. Amy Barker
USDA Forest Service
125 South State Street
Suite 1705
Salt Lake City, UT 84138

Re: Proposed Rule, National Environmental Policy Act (NEPA) Compliance, 84 Fed. Reg. 27,544 (June 13, 2019), Docket No. FS-2019-0010

Dear Ms. Barker,

The American Gas Association (AGA) respectfully submits these comments in response to the U.S. Forest Service's proposed rule, "National Environmental Policy Act (NEPA) Compliance", published in the Federal Register on June 13, 2019.¹ In this proposed rule, the Forest Service is proposing revisions to its regulations implementing the NEPA. AGA appreciates the opportunity to comment on this proposal and supports the balanced approach taken by the Forest Service in this proposed rule. If implemented, the proposed revisions will enable the Forest Service to increase efficiency in its environmental analysis and permitting processes while fulfilling its critically important environmental stewardship responsibilities and meeting NEPA's statutory requirements.

The American Gas Association, founded in 1918, represents more than 200 local energy companies that deliver clean natural gas throughout the United States. There are more than 74 million residential, commercial and industrial natural gas customers in the U.S., of which 95 percent — more than 71 million customers — receive their gas from AGA members. AGA is an advocate for natural gas utility companies and their customers and provides a broad range of programs and services for member natural gas pipelines, marketers, gatherers, international natural gas companies and industry associates. Today, natural gas meets more than one-fourth of the United States' energy needs.

Natural gas utilities nationwide add, on average, nearly 630,000 customers each year, or one customer every minute. More homes and business in the United States use natural gas today than ever before, and the numbers continue to increase. In order to meet this increasing demand, AGA members require regulatory certainty to maintain existing infrastructure and develop new infrastructure. Streamlining and clarifying the permitting and environmental review process will help facilitate the environmentally-responsible construction and maintenance of natural gas infrastructure and help AGA members provide timely, safe, reliable and affordable service to the 178 million Americans that enjoy the benefits of natural gas and the millions more that want it, but do not yet have access.

¹ 84 Fed. Reg. 27,544 (Jun. 13, 2019).

AGA commends the Forest Service for recognizing the need to revamp its NEPA procedures. Infrastructure projects in the United States have been “routinely and excessively delayed by agency processes and procedures “involving NEPA, which have “increased project costs and blocked the American people from the full benefits of increased infrastructure investments.”² Although NEPA and the Council on Environmental Quality’s (CEQ’s) implementing regulations direct Federal agencies to produce concise and straightforward environmental analyses that are not intended to be “encyclopedic” or even in excess of 300 pages,³ modern NEPA practice grossly flouts these directives.⁴ Largely due to these reasons, recent presidential administrations – from both political parties – have issued executive orders aimed at restoring order and efficiency to the NEPA process by encouraging agencies to streamline their NEPA reviews.⁵

The Forest Service’s NEPA regulations were first promulgated in 2008⁶ and, to a large extent, codified policies and practices established in the Service’s 1992 NEPA Manual and Handbook. Over the past decade, the Service’s NEPA processes and procedures have become less efficient, resulting in significant delays in moving important forest management decisions and projects through the NEPA process. According to the most recent Council on Environmental Quality (CEQ) data on the time it took Federal agencies to complete environmental impact statements, it took the Forest Service, on average, 3.35 years (1222 days) to complete an EIS.⁷ According to the Forest Service’s own data, it takes, on average, 1.87 years (687 days) to complete an environmental assessment.⁸ Although the Service spends considerable financial and personnel resources on NEPA analyses and documentation, it has a backlog of more than 5,000 applications for new special use permits and renewals of existing special use permits that are awaiting environmental analysis and decision

² See, e.g., Exec. Order No. 13,766, 82 Fed. Reg. 8,657 (Jan. 30, 2017); Exec. Order No. 13,807, 82 Fed. Reg. 40,463 (Aug. 24, 2017).

³ See 40 C.F.R. §§ 1500.4(b), 1502.7.

⁴ Where Federal agencies once produced 50-page environmental impact statements (“EISs”), those same agencies now produce EISs that exceed 10,000 pages. Compare *Life of the Land v. Brinegar*, 485 F.2d 460, 467 (9th Cir. 1973) (upholding a 46-page EIS prepared by the FAA) with *O’Hare Modernization Final Environmental Impact Statement*, https://www.faa.gov/airports/airport_development/omp/eis/feis/ (2005 FAA EIS of more than 10,000 pages). Based on recent CEQ data, the average page count for a Final EIS prepared by the Forest Service between 2013 and 2017 is 486 pages. See https://ceq.doe.gov/docs/nepa-practice/CEQ_EIS_Length_Report_2019-7-22.pdf.

⁵ See, e.g., Exec. Order No. 13,807, 82 Fed. Reg. 40,463 (Aug. 24, 2017) (Issued by President Trump); Exec. Order No. 13,766, 82 Fed. Reg. 8,657 (Jan. 30, 2017) (Issued by President Trump); Exec. Order No. 13,604, 77 Fed. Reg. 18,885 (Mar. 22, 2012) (Issued by President Obama); Exec. Order No. 13,274, 67 Fed. Reg. 59,449 (Sept. 18, 2002) (Issued by President George W. Bush).

⁶ 36 C.F.R. § 220.

⁷ See CEQ Report, *Environmental Impact Statement Timelines (2010-2017)* at https://ceq.doe.gov/docs/nepa-practice/CEQ_EIS_Timelines_Report_2018-12-14.pdf.

⁸ U.S. Forest Service Fact Sheet, “Proposed National Environmental Policy Act Rule” at 2, <https://www.fs.fed.us/emc/nepa/revisions/includes/docs/NEPARuleFactSheet.pdf>.

affecting 7,000 businesses and 120,000 jobs.⁹ As noted in the preamble to the proposed rule, “[t]he Forest Service is not fully meeting agency expectations, nor the expectations of the public, partners, and stakeholders, to improve the health and resilience of forests and grasslands, create jobs, and provide economic and recreational benefits.”¹⁰ In light of the above, AGA strongly supports the Service’s effort to modernize the Service’s NEPA policies and develop a NEPA program that meets statutory requirements and enables decision makers to make informed decisions in a timely manner.

Generally, AGA is supportive of the Service’s proposed rule and believes that many of the proposed modifications and additions will improve the Service’s NEPA processes, eliminate duplicative reviews, and encourage more uniform decision-making. Specifically, the addition of the “Determination of NEPA Adequacy” procedures (§220.4(i)), which would allow the Service to use a previously completed NEPA analysis to satisfy NEPA requirements for an essentially similar proposed action, should help reduce redundant analyses for similar projects with similar environmental impacts. Similarly, allowing materials to be incorporated by reference in NEPA documents should reduce redundancy, enable the Service to capitalize on the analyses and findings of previously completed studies, and result in more concise documents. AGA also believes that the Service’s expanded use of categorical exclusions (CE) in §220.5 strikes an appropriate balance between gaining efficiencies in the NEPA process while continuing to ensure that that important objectives of the NEPA statute are met.¹¹

Although AGA generally supports the steps taken by the Service to modernize its NEPA process the proposed rule, AGA believes the following recommendations would further improve and enhance the proposed rule:

Recommendation 1: The Service could further reduce unnecessary information gathering and analysis by clearly stating that responsible officials should focus their NEPA efforts on those issues that are relevant to the Service’s discretionary decisions under applicable action statutes. Expanding NEPA analysis to issues beyond the scope of the Service’s action statutes is not required by NEPA, does not advance its purposes, and does not provide meaningful input to decision makers. Moreover, the Service’s proposed rule should clearly and unambiguously remind responsible officials that the focus of a NEPA analysis should be on significant environmental impacts resulting from the proposed

⁹ See, e.g., 84 Fed. Reg. at 27,544 and U.S. Forest Service Proposed Rulemaking Frequently Asked Questions at <https://www.fs.fed.us/emc/nepa/revisions/index.shtml>.

¹⁰ 84 Fed. Reg. at 27544.

¹¹ As noted in the preamble to the proposed rule, the Forest Service, because it manages National Forests through land management plans, is particularly well suited when compared to other federal agencies to use CEs to satisfy NEPA requirements. However, the Forest Service has historically been one of the most frequent producers of EISs. For example, from 2008-2012, the Forest Service completed 572 EISs, more than the Federal Highway Administration and U.S. Army Corps of Engineers combined. See U.S. Gov’t Accountability Off., GAO-14-369, National Environmental Policy Act: Little Information Exists on NEPA Analysis 10 (2014). The common-sense CEs offered in the proposed rule should enable a streamlined approach to processing both new authorizations and renewals of existing authorizations where there is minimal environmental impact.

action, not on developing an equally comprehensive analyses of all potential impacts.¹²

Recommendation 2: The Service is often required to review aspects of proposed interstate natural gas pipeline projects that are subject to a broader review by other federal agencies (e.g., FERC). In these instances, and to the extent feasible, the Service should adhere to the requirements of Executive Order 13807, “Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects” in order to avoid duplicative efforts, leverage existing knowledge and expertise, and achieve prompt final agency action.¹³ To that end, the Service should consider incorporating the requirements of Executive Order 13807 in its final rule in order to ensure that the Service’s NEPA processes are coordinated, predictable, and transparent. Moreover, the Service’s final rule should, consistent with 40 C.F.R. §1500.5(e),¹⁴ establish appropriate time limits for completion of the NEPA process, as well as the organization, focus, and length of typical NEPA documents. Including such guidance would make the NEPA process less burdensome on both the Service and project applicants and improve the quality and utility of NEPA documents.

Recommendation 3: AGA is supportive of the inclusion of both adaptive management and condition-based management in the Service’s proposed rule. AGA sees this as recognition that the environment is dynamic, allows projects to adopt practices based on conditions in the field, and may be especially useful for landscape scale projects. However, the Service should provide additional information regarding application of condition-based management in the final rule in order to ensure consistent understanding and application of this analytical approach. As currently drafted, the definition and discussion of condition-based management is unclear.

¹² See 40 C.F.R. §1500.1, which unambiguously states that “NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail” and that “NEPA’s purpose is not to generate paperwork – even excellent paperwork – but to foster excellent action.”

¹³ Exec. Order No. 13807, signed on Aug. 15, 2017, is intended to accelerate the environmental review and permitting for infrastructure projects that require an EIS under NEPA. It requires Federal agencies to process environmental reviews and authorization decisions for “major infrastructure projects” as “One Federal Decision” and sets a government-wide goal of reducing, to two years, the average time for each agency to complete the required environmental reviews and authorization decisions for major infrastructure projects, as measured from the date of publication of a notice of intent to prepare an environmental impact statement. The Exec. Order also requires all Federal authorization decisions for the construction of these projects to be completed within 90 days of the issuance of a ROD.

¹⁴ See 40 C.F.R. §1500.5, which requires agencies to reduce delay by, among other things, “establishing appropriate time limits for the environmental impact statement process (§§1501.7(b)(2) and 1501.8).”

Recommendation 4: Many AGA members rely on Special Use Permits (SUP) for most maintenance activities conducted within utility corridors. AGA appreciates the inclusion of §220.5(d)(11), which creates a CE for the issuance of a new special use authorization to replace an existing or expired special use authorization, when such issuance is a purely clerical action to account for administrative changes. As currently drafted, this CE would only apply to administrative changes to a SUP. AGA recommends expanding this CE slightly to include certain non-administrative changes (e.g., changes that account for changes in work practices or vegetation management practices within a utility right-of-way) to a SUP when the applicant can demonstrate that the modification to the SUP is limited to the previously authorized right-of-way and not reasonably expected to result in significant additional environmental impacts.

Recommendation 5: §220.5(e)(2) creates a CE for the “additional construction or reconstruction of existing telephone or utility lines in a designated corridor.” As currently drafted, it is unclear if this CE would apply to repair and replacement activities for pipelines authorized by an existing SUP. This CE should be clarified regarding its applicability to repair or replacement of pipeline infrastructure, particularly when the reasonably expected environmental impacts are expected to be minor.

Recommendation 6: AGA suggests that, in its final rule, the Service confirm that the construction of temporary access roads to utility corridors would be covered by the CE found at §220.5(e)(3), if all applicable conditions of the CE are satisfied (e.g., less than 20 acres or NFS lands are required). Alternatively, the Service should consider including a CE that specifically covers the construction of temporary access roads to utility corridors in order to facilitate the expeditious inspection, repair, and replacement of natural gas pipeline infrastructure when the environmental impacts are temporary, minimal, and the site is restored when maintenance work is complete.

Recommendation 7: AGA also recommends that the Service consider adopting a CE for integrated vegetative management (IVM) in its final rule. IVM practices reduce the need for herbicides, promote healthy ecosystems, and provide measurable results, including increased natural species diversity along utility corridors and rights of way and improved control of invasive species. In 2016, the U.S. Department of Agriculture, along with the U.S. Environmental Protection Agency, U.S. Department of Interior, Edison Electric Institute, and Utility Arborist Association signed a Memorandum of Understanding designed to facilitate cooperation and coordination among the parties regarding vegetation management within and immediately adjacent to existing and future utility rights of way and associated facilities. This MOU encourages the implementation of cost-effective and environmentally sound vegetation management plans,

procedures, and practices for utility rights-of-way.¹⁵ Adoption of a CE for IVM in utility rights-of-way would advance the objectives of the MOU by enabling implementation of cost-effective and environmentally sound vegetation management plans, procedures, and practices for utility rights-of-way. If adopted, this CE should permit both the implementation and revision (e.g., adoption of alternate work practices) of an IVM program, when that program occurs within an existing right-of-way and would have only minor, short-term effects on the surrounding environment with low potential for significant environmental impacts.

Our member companies rely on timely, transparent federal permits and reviews to meet their construction, maintenance, emergency repair, replacement, and pipeline safety goals. AGA appreciates the Service's efforts to improve and modernize its NEPA procedures and processes, and believes that the proposed rule, subject to the recommended changes noted above, strikes an appropriate balance between regulatory efficiency and environmental stewardship.

AGA appreciates the opportunity to comment. If you have any questions, please contact me or Pam Lacey, AGA's Chief Regulatory Counsel, at placey@aga.org.

Respectfully Submitted,



Timothy R. Parr
Senior Counsel
American Gas Association
400 N. Capitol St., NW
Washington, DC 20001
202.824.7072
tparr@aga.org

¹⁵ See Memorandum of Understanding on Vegetation Management for Powerline Rights-of-Way, https://www.epa.gov/sites/production/files/201611/documents/signed_2016_vegetation_mou_between_industry_and_federal_land_management_agencies.pdf (last accessed Aug. 20, 2019).