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Members of the Federal Energy Regulatory Commission
Chairman, and Commissioners
Federal Energy Regulatory Commission
888 First St., N.E.
Washington, DC, 20426

**Impermissible Segmentation of CP15-500, the Proposed Presidio Crossing Project
and associated Trans-Pecos Pipeline**

40 CFR Chapter V, § 1502.4 defines criteria for Federal actions that require preparation of an EIS. This works together with 40 CFR Chapter V, § 1508.25, "Scope." This brings us to the core of the matter – distinctions under which a Federal agency (i.e. FERC) must consider the scope, and impacts of a project as a whole, rather than a jurisdictional facility in isolation.

The CEQ regulations implementing NEPA require that an EIS include (§ 1508.25 a.)):

- (1) connected actions, including those that are "interdependent parts of a larger action and depend on the larger action for their justification;"
- (2) cumulative actions, "which when viewed with other proposed actions have cumulatively significant impacts;"
- (3) similar actions, "which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together."

An agency "impermissibly 'segments' NEPA review when it divides connected, cumulative, or similar actions into separate pieces under consideration."

Under CEQ administrative statutes, the courts adopt a unitary analysis of a project under one of three specific tests, which are used to determine whether or not environmental assessment is required for a project as a whole, or if the "jurisdictional" segment of the project can be evaluated in isolation:

1. Whether the Parts of a Project are Interdependent or Merely Serve Complementary Functions
2. The "But-For" Test
3. "Links-in-the Same Bit of Chain"

In "1", examine the proposed Trans-Pecos Pipeline, composed of a 1093-foot jurisdictional segment (the Presidio Crossing Project), and the nominal 143-mile non-jurisdictional facilities, regulated under Railroad Commission of Texas authority. Clearly, both the jurisdictional, and non-jurisdictional facilities are interdependent – without the purported intrastate segment of the proposed pipeline, the border crossing facility is non-functional, serves no purpose. It depends entirely upon the upstream non-jurisdictional facility. Similarly, the upstream non-jurisdictional facility serves no purpose, other than to transport natural gas to the border crossing segment – it serves no domestic/municipal customers, and provides no other utility except the connection between the Waha Natural Gas Market Hub and the border crossing, to export natural gas to the customer, CFE.

In "2", the "But-For" test, utilized by some courts to determine whether a project has been sufficiently federalized also considers the nexus between the non-jurisdictional and jurisdictional portions of the project. Only if the jurisdictional portion of the project is sufficiently critical to the non-jurisdictional portion of the project would the nexus between the two be sufficient to federalize (i.e. require NEPA compliance for) the entire project. Again, the interdependence of the two segments of the project is clear – the border-crossing is certainly "sufficiently critical" to the remainder of the project, thus requiring that the project as a whole is federalized.

In "3", "Links-in-the-Same Bit of Chain", some courts look at the link, or links between end-points associated with a project. If the jurisdictional and non-jurisdictional facilities are analyzed, and appear to be related, as are links in a length of chain connecting end-points, the project must be federalized – this test is similar to "1", and "2". Again, the proposed Trans-Pecos Pipeline, and its Presidio Crossing Project, along with the non-jurisdictional facilities are examined, each facility is one link in the "same bit of chain", connecting the Waha Natural Gas Market Hub to the customer's pipeline in Mexico.

In the case of the proposed Trans-Pecos Pipeline, all three tests result in the unequivocal outcome that the entire project is subject to NEPA compliance, not just the jurisdictional segment at the border.

Clearly on the basis of these facts, the Commission should consider: EA scoping must include both the jurisdictional, and non-jurisdictional facilities associated with CP15-500, the proposed Trans-Pecos Pipeline – not doing so would place FERC at odds with the laws associated with 40 CFR Chapter V, Parts 1500 – 1518. In turn, impermissible segmentation of the project would lead to litigation and court challenges, under well-established precedents

The permit application on FERC Docket CP15-500, as constructed by the applicant, is a blatant, and clear attempt by the project consortium to impermissibly segment the project, and circumvent the intent of NEPA compliance.

On that basis, the Commission is accountable, and should hold the applicant accountable, requiring an Environmental Assessment for the project as a whole, with a recommendation that the entire project, including jurisdictional and non-jurisdictional segments be subject to a complete Environmental Impact Statement.

The Commission must prepare an environmental impact statement (EIS) to consider the impacts of the 143-mile non-jurisdictional intrastate pipeline as required by:

- 1
1. The Commission’s four-factor test in Algonquin Gas Trans. Co.,
2. NEPA’s anti-segmentation policy and
- 2
3. CEQ regulations on evaluation of cumulative impacts , and
4. CEQ regulations governing preparation of an EIS.

Applying the Alonquin test, the Commission must extend environmental review to Trans-Pecos’s proposed intrastate pipeline facilities . Applying Delaware Riverkeeper v. FERC, it is clear that both the jurisdictional, and so-called non-jurisdictional portions of this project are related, interdependent, and must be considered as a whole.

1Algonquin Gas Trans. Co., 59 FERC ¶ 61,255

2See Delaware Riverkeeper v. FERC, 753 F.3d 1304, 1313 (D.C. Cir. 2014)

359 FERC ¶ 61,255, at *11- *12. See also, Nat. Committee for New River v. FERC, 373 F.3d 1324 (D.C. Cir. 2004)(citing with approval Commission’s Algonquin test for determining scope of authority to review non-jurisdictional facilities).