

119TH CONGRESS
2D SESSION

S. _____

To promote interagency coordination for reviewing certain authorizations
under the Natural Gas Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. COTTON introduced the following bill; which was read twice and referred
to the Committee on _____

A BILL

To promote interagency coordination for reviewing certain
authorizations under the Natural Gas Act, and for other
purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Jurisdictional Over-
5 sight and Adjudication for Natural Gas Act” or the
6 “JOAN Act”.

7 **SEC. 2. PROMOTING INTERAGENCY COORDINATION FOR**
8 **REVIEW OF NATURAL GAS INFRASTRUCTURE.**

9 (a) DEFINITIONS.—In this section:

1 (1) COMMISSION.—The term “Commission”
2 means the Federal Energy Regulatory Commission.

3 (2) FEDERAL AUTHORIZATION.—The term
4 “Federal authorization” has the meaning given that
5 term in section 15(a) of the Natural Gas Act (15
6 U.S.C. 717n(a)).

7 (3) NEPA REVIEW.—The term “NEPA review”
8 means the process of reviewing a proposed Federal
9 action under section 102 of the National Environ-
10 mental Policy Act of 1969 (42 U.S.C. 4332).

11 (4) PROJECT-RELATED NEPA REVIEW.—The
12 term “project-related NEPA review” means any
13 NEPA review required to be conducted with respect
14 to the issuance of an authorization under section 3
15 of the Natural Gas Act (15 U.S.C. 717b) or a cer-
16 tificate of public convenience and necessity under
17 section 7 of such Act (15 U.S.C. 717f).

18 (b) COMMISSION NEPA REVIEW RESPONSIBIL-
19 ITIES.—In acting as the lead agency under section
20 15(b)(1) of the Natural Gas Act (15 U.S.C. 717n(b)(1))
21 for the purposes of complying with the National Environ-
22 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with
23 respect to an authorization under section 3 of the Natural
24 Gas Act (15 U.S.C. 717b) or a certificate of public conven-
25 ience and necessity under section 7 of such Act (15 U.S.C.

1 717f), the Commission shall, in accordance with this sec-
2 tion and other applicable Federal law—

3 (1) be the only lead agency;

4 (2) coordinate as early as practicable with each
5 agency designated as a participating agency under
6 subsection (d)(3) to ensure that the Commission de-
7 velops information in conducting its project-related
8 NEPA review that is reasonably required by the par-
9 ticipating agency in considering an aspect of an ap-
10 plication for a Federal authorization for which the
11 agency is responsible; and

12 (3) take such actions as are necessary and
13 proper to facilitate the expeditious resolution of its
14 project-related NEPA review.

15 (c) DEFERENCE TO COMMISSION.—In making a deci-
16 sion with respect to a Federal authorization required with
17 respect to an application for authorization under section
18 3 of the Natural Gas Act (15 U.S.C. 717b) or a certificate
19 of public convenience and necessity under section 7 of such
20 Act (15 U.S.C. 717f), each agency shall give deference,
21 to the maximum extent authorized by law, to the scope
22 of the project-related NEPA review that the Commission
23 determines to be appropriate.

24 (d) PARTICIPATING AGENCIES.—

1 (1) IDENTIFICATION.—The Commission shall
2 identify, not later than 30 days after the Commis-
3 sion receives an application for an authorization
4 under section 3 of the Natural Gas Act (15 U.S.C.
5 717b) or a certificate of public convenience and ne-
6 cessity under section 7 of such Act (15 U.S.C.
7 717f), any Federal or State agency, local govern-
8 ment, or Indian Tribe that may issue a Federal au-
9 thorization or is required by Federal law to consult
10 with the Commission in conjunction with the
11 issuance of a Federal authorization required for
12 such authorization or certificate.

13 (2) INVITATION.—

14 (A) IN GENERAL.—Not later than 45 days
15 after the Commission receives an application for
16 an authorization under section 3 of the Natural
17 Gas Act (15 U.S.C. 717b) or a certificate of
18 public convenience and necessity under section
19 7 of such Act (15 U.S.C. 717f), the Commis-
20 sion shall invite any agency identified under
21 paragraph (1) to participate in the review proc-
22 ess for the applicable Federal authorization.

23 (B) DEADLINE.—An invitation issued
24 under subparagraph (A) shall establish a dead-
25 line by which a response to the invitation shall

1 be submitted to the Commission, which may be
2 extended by the Commission for good cause.

3 (3) DESIGNATION AS PARTICIPATING AGEN-
4 CIES.—Not later than 60 days after the Commission
5 receives an application for an authorization under
6 section 3 of the Natural Gas Act (15 U.S.C. 717b)
7 or a certificate of public convenience and necessity
8 under section 7 of such Act (15 U.S.C. 717f), the
9 Commission shall designate an agency identified
10 under paragraph (1) as a participating agency with
11 respect to an application for authorization under
12 section 3 of the Natural Gas Act (15 U.S.C. 717b)
13 or a certificate of public convenience and necessity
14 under section 7 of such Act (15 U.S.C. 717f) unless
15 the agency informs the Commission, in writing, by
16 the deadline established pursuant to paragraph
17 (2)(B), that the agency—

18 (A) has no jurisdiction or authority with
19 respect to the applicable Federal authorization;

20 (B) has no special expertise or information
21 relevant to any project-related NEPA review; or

22 (C) does not intend to submit comments
23 for the record for the project-related NEPA re-
24 view conducted by the Commission.

1 (4) EFFECT OF DESIGNATION AND NON-DES-
2 IGNATION.—Designation or non-designation of an
3 agency as a participating agency under paragraph
4 (3) with respect to an application for an authoriza-
5 tion under section 3 of the Natural Gas Act (15
6 U.S.C. 717b) or a certificate of public convenience
7 and necessity under section 7 of such Act (15 U.S.C.
8 717f) may not serve as evidence of an incomplete
9 record before a court.

10 (e) WATER QUALITY IMPACTS.—

11 (1) IN GENERAL.—Notwithstanding section 401
12 of the Federal Water Pollution Control Act (33
13 U.S.C. 1341), an applicant for a Federal authoriza-
14 tion shall not be required to provide a certification
15 under such section with respect to the Federal au-
16 thorization.

17 (2) COORDINATION.—With respect to any
18 NEPA review for a Federal authorization to conduct
19 an activity that will directly result in a discharge
20 into the navigable waters (within the meaning of the
21 Federal Water Pollution Control Act (33 U.S.C.
22 1251 et seq.)), the Commission shall identify as an
23 agency under subsection (d)(1) the State in which
24 the discharge originates or will originate, or, if ap-
25 propriate, the interstate water pollution control

1 agency having jurisdiction over the navigable waters
2 at the point where the discharge originates or will
3 originate.

4 (3) PROPOSED CONDITIONS.—A State or inter-
5 state agency designated as a participating agency
6 pursuant to paragraph (2) may propose to the Com-
7 mission terms or conditions for inclusion in an au-
8 thorization under section 3 of the Natural Gas Act
9 (15 U.S.C. 717b) or a certificate of public conven-
10 ience and necessity under section 7 of such Act (15
11 U.S.C. 717f) that the State or interstate agency de-
12 termines are necessary to ensure that any activity
13 described in paragraph (2) conducted pursuant to
14 such authorization or certification will comply with
15 the applicable provisions of sections 301, 302, 303,
16 306, and 307 of the Federal Water Pollution Con-
17 trol Act (33 U.S.C. 1311, 1312, 1313, 1316, 1317).

18 (4) COMMISSION CONSIDERATION OF CONDI-
19 TIONS.—The Commission may include a term or
20 condition in an authorization under section 3 of the
21 Natural Gas Act (15 U.S.C. 717b) or a certificate
22 of public convenience and necessity under section 7
23 of such Act (15 U.S.C. 717f) proposed by a State
24 or interstate agency under paragraph (3) only if the
25 Commission finds that the term or condition is nec-

1 essary to ensure that any activity described in para-
2 graph (2) conducted pursuant to such authorization
3 or certification will comply with the applicable provi-
4 sions of sections 301, 302, 303, 306, and 307 of the
5 Federal Water Pollution Control Act (33 U.S.C.
6 1311, 1312, 1313, 1316, 1317).

7 (f) SCHEDULE.—

8 (1) DEADLINE FOR FEDERAL AUTHORIZA-
9 TIONS.—A deadline for a Federal authorization re-
10 required with respect to an application for authoriza-
11 tion under section 3 of the Natural Gas Act (15
12 U.S.C. 717b) or a certificate of public convenience
13 and necessity under section 7 of such Act (15 U.S.C.
14 717f) set by the Commission under section 15(c)(1)
15 of such Act (15 U.S.C. 717n(c)(1)) shall be not later
16 than 90 days after the Commission completes its
17 project-related NEPA review, unless an applicable
18 schedule is otherwise established by Federal law.

19 (2) CONCURRENT REVIEWS.—Each Federal and
20 State agency—

21 (A) that may consider an application for a
22 Federal authorization required with respect to
23 an application for authorization under section 3
24 of the Natural Gas Act (15 U.S.C. 717b) or a
25 certificate of public convenience and necessity

1 under section 7 of such Act (15 U.S.C. 717f)
2 shall formulate and implement a plan for ad-
3 ministrative, policy, and procedural mechanisms
4 to enable the agency to ensure completion of
5 Federal authorizations in compliance with
6 schedules established by the Commission under
7 section 15(c)(1) of such Act (15 U.S.C.
8 717n(c)(1)); and

9 (B) in considering an aspect of an applica-
10 tion for a Federal authorization required with
11 respect to an application for authorization
12 under section 3 of the Natural Gas Act (15
13 U.S.C. 717b) or a certificate of public conven-
14 ience and necessity under section 7 of such Act
15 (15 U.S.C. 717f), shall—

16 (i) formulate and implement a plan to
17 enable the agency to comply with the
18 schedule established by the Commission
19 under section 15(c)(1) of such Act (15
20 U.S.C. 717n(c)(1));

21 (ii) carry out the obligations of that
22 agency under applicable law concurrently,
23 and in conjunction with, the project-related
24 NEPA review conducted by the Commis-
25 sion, and in compliance with the schedule

1 established by the Commission under sec-
2 tion 15(c)(1) (15 U.S.C. 717n(c)(1)) of
3 such Act, unless the agency notifies the
4 Commission in writing that doing so would
5 impair the ability of the agency to conduct
6 needed analysis or otherwise carry out
7 such obligations;

8 (iii) transmit to the Commission a
9 statement—

10 (I) acknowledging receipt of the
11 schedule established by the Commis-
12 sion under section 15(c)(1) of the
13 Natural Gas Act (15 U.S.C.
14 717n(c)(1)); and

15 (II) setting forth the plan formu-
16 lated under clause (i) of this subpara-
17 graph;

18 (iv) not later than 30 days after the
19 agency receives such application for a Fed-
20 eral authorization, transmit to the appli-
21 cant a notice—

22 (I) indicating whether such appli-
23 cation is ready for processing; and

24 (II) if such application is not
25 ready for processing, that includes a

1 comprehensive description of the in-
2 formation needed for the agency to
3 determine that the application is
4 ready for processing;

5 (v) determine that such application
6 for a Federal authorization is ready for
7 processing for purposes of clause (iv) if
8 such application is sufficiently complete for
9 the purposes of commencing consideration,
10 regardless of whether supplemental infor-
11 mation is necessary to enable the agency to
12 complete the consideration required by law
13 with respect to such application; and

14 (vi) not less often than once every 90
15 days, transmit to the Commission a report
16 describing the progress made in consid-
17 ering such application for a Federal au-
18 thorization.

19 (3) FAILURE TO MEET DEADLINE.—If a Fed-
20 eral or State agency, including the Commission, fails
21 to meet a deadline for a Federal authorization set
22 forth in the schedule established by the Commission
23 under section 15(c)(1) of the Natural Gas Act (15
24 U.S.C. 717n(c)(1)), not later than 5 days after such
25 deadline, the head of the relevant Federal agency

1 (including, in the case of a failure by a State agency,
2 the Federal agency overseeing the delegated author-
3 ity) shall notify Congress and the Commission of
4 such failure and set forth a recommended implemen-
5 tation plan to ensure completion of the action to
6 which such deadline applied.

7 (g) CONSIDERATION OF APPLICATIONS FOR FED-
8 ERAL AUTHORIZATION.—

9 (1) ISSUE IDENTIFICATION AND RESOLU-
10 TION.—

11 (A) IDENTIFICATION.—Federal and State
12 agencies that may consider an aspect of an ap-
13 plication for a Federal authorization shall iden-
14 tify, as early as possible, any issues of concern
15 that may delay or prevent an agency from
16 working with the Commission to resolve such
17 issues and granting such authorization.

18 (B) ISSUE RESOLUTION.—The Commission
19 may forward any issue of concern identified
20 under subparagraph (A) to the heads of the rel-
21 evant agencies (including, in the case of an
22 issue of concern that is a failure by a State
23 agency, the Federal agency overseeing the dele-
24 gated authority, if applicable) for resolution.

25 (2) REMOTE SURVEYS.—

1 (A) IN GENERAL.—If a Federal or State
2 agency considering an aspect of an application
3 for a Federal authorization requires the person
4 applying for such authorization to submit data,
5 the agency shall consider any such data gath-
6 ered by aerial or other remote means that the
7 person submits.

8 (B) CONDITIONAL APPROVAL.—The agen-
9 cy may grant a conditional approval for the
10 Federal authorization based on data gathered
11 by aerial or remote means, conditioned on the
12 verification of such data by subsequent onsite
13 inspection.

14 (3) APPLICATION PROCESSING.—The Commis-
15 sion, and Federal and State agencies, may allow a
16 person applying for a Federal authorization to fund
17 a third-party contractor to assist in reviewing the
18 application for such authorization.

19 (h) ACCOUNTABILITY, TRANSPARENCY, EFFI-
20 CIENCY.—For an application for an authorization under
21 section 3 of the Natural Gas Act (15 U.S.C. 717b) or a
22 certificate of public convenience and necessity under sec-
23 tion 7 of such Act (15 U.S.C. 717f) that requires multiple
24 Federal authorizations, the Commission, with input from
25 any Federal or State agency considering an aspect of the

1 application, shall track and make available to the public
2 on the website of the Commission information related to
3 the actions required to complete the Federal authoriza-
4 tions. Such information shall include the following:

5 (1) The schedule established by the Commission
6 under section 15(c)(1) of the Natural Gas Act (15
7 U.S.C. 717n(c)(1)).

8 (2) A list of all the actions required by each ap-
9 plicable agency to complete permitting, reviews, and
10 other actions necessary to obtain a final decision on
11 the application.

12 (3) The expected completion date for each such
13 action.

14 (4) A point of contact at the agency responsible
15 for each such action.

16 (5) In the event that an action is still pending
17 as of the expected date of completion, a brief expla-
18 nation of the reasons for the delay.

19 **SEC. 3. ACCELERATION OF CLAIMS.**

20 (a) DEFINITIONS.—In this section:

21 (1) CIVIL ACTION.—The term “civil action”
22 means an initial claim challenging a core authoriza-
23 tion for a covered project.

24 (2) COMMISSION.—The term “Commission”
25 means the Federal Energy Regulatory Commission.

1 (3) CORE AUTHORIZATION.—The term “core
2 authorization” means a Federal authorization issued
3 pursuant to section 3(e) or section 7(c) of the Nat-
4 ural Gas Act (15 U.S.C. 717b(e), 717f(c)).

5 (4) COVERED PROJECT.—The term “covered
6 project” means a project requiring a core authoriza-
7 tion.

8 (5) FEDERAL AUTHORIZATION.—The term
9 “Federal authorization” means any license, permit,
10 approval, finding, determination, or administrative
11 decision issued by an agency, and any interagency
12 consultation that is required or authorized under
13 Federal law, to site, construct, reconstruct, abandon,
14 or commence operations of a covered project admin-
15 istered by—

16 (A) a Federal agency; or

17 (B) in the case of a State participating in
18 or administering a review required or author-
19 ized under Federal law, as applicable, a State
20 agency.

21 (6) PROJECT SPONSOR.—The term “project
22 sponsor” means any person, including a State, Trib-
23 al, or local government entity, that—

1 (A) is an applicant for, or holder of, a core
2 authorization or any other Federal authoriza-
3 tion for a covered project; or

4 (B) otherwise proposes to site, construct,
5 reconstruct, own, or operate a covered project.

6 (7) RELATED CLAIM.—The term “related
7 claim” means a claim challenging a Federal author-
8 ization that is joined to a civil action after that civil
9 action has been filed.

10 (b) FINAL AGENCY ACTION.—Notwithstanding any
11 other provision of law, issuance of a core authorization for
12 a covered project shall be considered a final agency action
13 for the purposes of chapter 7 of title 5, United States
14 Code, with respect to all Federal authorizations required
15 for that covered project.

16 (c) CLAIMS.—

17 (1) SOLE AND EXCLUSIVE RELIEF.—

18 (A) IN GENERAL.—The filing and final ad-
19 judication of a civil action shall constitute the
20 sole and exclusive means of judicial review and
21 relief with respect to the applicable covered
22 project and all Federal authorizations issued for
23 that covered project.

24 (B) BAR ON SUBSEQUENT ACTIONS.—

25 After the final adjudication of a civil action,

1 any subsequent cause of action or challenge,
2 whether statutory, procedural, or substantive,
3 related to or connected with the applicable cov-
4 ered project or any Federal authorization for
5 that covered project brought by any party ex-
6 cept the project sponsor shall be barred and
7 dismissed for lack of jurisdiction.

8 (2) VENUE.—

9 (A) IN GENERAL.—A civil action shall be
10 filed exclusively in—

11 (i) the United States Court of Appeals
12 for the District of Columbia Circuit; or

13 (ii) the court of appeals of the United
14 States for the judicial circuit in which the
15 principal place of business of the project
16 sponsor for the applicable covered project
17 is located.

18 (B) RELATED CLAIMS.—After a civil ac-
19 tion is filed in an applicable court described in
20 subparagraph (A), all related claims arising out
21 of the same nucleus of operative fact as that
22 civil action shall be joined or consolidated to
23 that court for adjudication.

24 (3) TIME TO FILE.—A civil action and all re-
25 lated claims arising out of the same nucleus of oper-

1 ative fact shall be filed with the applicable court by
2 the earlier of—

(A) the date that is 60 days after the core authorization is published in the Federal Register; and

(B) the statutory deadline required for causes of action relating to that core authorization.

9 (4) JUDICIAL REVIEW.—

(A) IN GENERAL.—Subject to subsection (d), the filing and final adjudication of a civil action shall constitute the only opportunity for judicial review of the applicable covered project and all Federal authorizations issued for that covered project.

16 (B) SCOPE.—Judicial review of a civil ac-
17 tion and any related claim arising out of the
18 same nucleus of operative fact under this sec-
19 tion—

20 (i) shall—

(I) be limited to the finalized consolidated record under subsection (g)(3)(C); and

24 (II) be based exclusively on that
25 finalized consolidated record; and

1 (ii) shall not take evidence, permit
2 discovery, receive testimony, or engage in
3 fact-finding.

4 (C) PRELIMINARY INJUNCTIONS.—

5 (i) MULTIPLICATIVE MERIT STAND-
6 ARD.—In any civil action seeking a pre-
7 liminary injunction or a temporary re-
8 straining order to halt a Federal action
9 based on an alleged violation of this Act,
10 the applicable court shall determine the
11 likelihood of success on the merits by cal-
12 culating the cumulative probability of suc-
13 cess across all independent legal and juris-
14 dictional requirements.

15 (ii) PROBABILISTIC CALCULATION.—A
16 court may not find a likelihood of success
17 on the merits under clause (i) unless the
18 product of the probabilities of success for
19 each independent legal and jurisdictional
20 requirement, including standing under arti-
21 cle III of the Constitution of the United
22 States, final agency action, and the merits
23 of the underlying claim, exceeds 50 per-
24 cent.

1 (iii) WRITTEN FINDINGS.—The court
2 under clause (ii) shall issue written find-
3 ings of fact and conclusions of law speci-
4 fying—

5 (I) the estimated probability of
6 success assigned to each independent
7 legal and jurisdictional requirement;
8 and

9 (II) the cumulative probability of
10 success.

11 (D) DEADLINE.—If the applicable court
12 does not issue a final determination for a filed
13 civil action and all related claims arising out of
14 the same nucleus of operative fact by the date
15 that is 180 days after the expiration of the ap-
16 plicable timeline described in paragraph (3), the
17 core authorization and all associated Federal
18 authorizations for the applicable covered project
19 shall be considered approved and not subject to
20 further review.

21 (E) IDENTIFICATION OF FACTUAL DETER-
22 MINATIONS.—For the purposes of judicial re-
23 view, the statements of material fact submitted
24 under subsection (g)(2) shall not constitute
25 independent evidence or a freestanding factual

1 determination apart from the cited administra-
2 tive record material.

3 (5) RELIEF.—

4 (A) IN GENERAL.—In reviewing a civil ac-
5 tion, the applicable court may not—

6 (i) issue an injunction lasting for a
7 period exceeding 60 days;

8 (ii) enjoin any covered project activity
9 unrelated to a specific issue identified by
10 the court; or

11 (iii) grant permanent injunctive relief
12 unless the plaintiff demonstrates by clear
13 and convincing evidence that—

14 (I) the plaintiff has suffered an
15 irreparable injury;

16 (II) remedies available at law, in-
17 cluding monetary damages, are inad-
18 equate to compensate for the irrep-
19 arable injury;

20 (III) considering the balance of
21 hardships between the plaintiff and
22 defendant, a remedy in equity is war-
23 ranted; and

1 (IV) the public interest would not
2 be disserved by a permanent injunc-
3 tion.

4 (B) PERMANENT INJUNCTION.—Any per-
5 manent injunction issued by a court pursuant
6 to this subsection shall be supported by a find-
7 ing, by clear and convincing evidence, of ex-
8 traordinary circumstances, and shall be as nar-
9 rowly tailored as possible to correct the injury
10 and the least intrusive means necessary to cor-
11 rect the injury.

12 (C) SECURITY FOR INJUNCTIVE RELIEF.—
13 Any court issuing a temporary restraining order
14 or preliminary injunction in a civil action under
15 this section shall require the movant to provide
16 security in an amount that the court considers
17 proper to pay the costs and damages sustained
18 by any party found to have been wrongfully en-
19 joined or restrained, consistent with rule 65(c)
20 of the Federal Rules of Civil Procedure.

21 (6) NO REMAND WITH VACATUR.—In reviewing
22 a civil action, the applicable court may not issue a
23 remedy of remand with vacatur.

24 (7) PROJECT SEGMENTATION.—After the filing
25 of a civil action, the project sponsor for the impli-

1 cated covered project may continue construction for
2 any part of the covered project that is unaffected by
3 the civil action.

4 (8) PROHIBITED CIVIL ACTIONS.—A civil action
5 may not be filed by any party that did not raise the
6 issue giving rise to that civil action during the notice
7 and comment period for the applicable Federal au-
8 thorization.

9 (d) PROJECT SPONSOR EXCEPTION.—

10 (1) IN GENERAL.—Notwithstanding subsection
11 (c), a project sponsor may bring a separate claim
12 challenging a Federal authorization for an applicable
13 covered project regardless of whether a civil action
14 concerning that Federal authorization has been filed
15 and adjudicated, subject to the condition that the
16 specific underlying issue of that separate claim has
17 not previously been finally adjudicated.

18 (2) NO RELATED CLAIMS.—A claim described
19 in paragraph (1) may not be joined by a related
20 claim or any other claim arising out of the same nu-
21 cleus of operative fact.

22 (e) EFFECT ON SUBSTANTIVE STANDARDS.—Noth-
23 ing in this section alters substantive environmental re-
24 quirements or reduces opportunities for public comment
25 under applicable Federal law.

1 (f) MULTIPLE CORE AUTHORIZATIONS.—If more
2 than 1 Federal agency issues a core authorization for a
3 covered project, the Commission shall be the lead agency
4 for purposes of an environmental review for the covered
5 project under the National Environmental Policy Act of
6 1969 (42 U.S.C. 4321 et seq.), if applicable.

7 (g) STATEMENT OF MATERIAL FACTS AND TECH-
8 NICAL FINDINGS.—

9 (1) DEFINITION OF STATEMENT OF MATERIAL
10 FACT.—In this subsection, the term “statement of
11 material fact” means a citation index identifying, by
12 specific record citation, the portions of the adminis-
13 trative record that set forth the material factual de-
14 terminations and technical conclusions relied on in a
15 Federal authorization for a covered project.

16 (2) TRANSMISSION.—Not later than 60 days
17 after the date of publication of a core authorization
18 in the Federal Register, each Federal agency that
19 issued, or is required to issue, a Federal authoriza-
20 tion for the applicable covered project shall submit
21 to the Commission—

22 (A) the administrative record for that Fed-
23 eral authorization; and

24 (B) a statement of material fact and tech-
25 nical conclusions that identifies, by specific cita-

1 tion to the administrative record, the portions
2 of the record containing the material factual de-
3 terminations and technical conclusions relied on
4 by the Federal agency.

5 (3) CONSOLIDATED ADMINISTRATIVE
6 RECORD.—

7 (A) CONSOLIDATE AND PUBLISH.—Not
8 later than 90 days after the date of publication
9 of a core authorization in the Federal Register,
10 the Commission shall—

11 (i) consolidate the submissions under
12 paragraph (2) (referred to in this sub-
13 section as the “consolidated administrative
14 record”); and

15 (ii) publish a notice of availability of
16 the consolidated administrative record.

17 (B) OBJECTIONS.—

18 (i) IN GENERAL.—Not later than 30
19 days after the date of publication of the
20 notice under subparagraph (A), any party
21 may submit to the Commission a written
22 objection limited to whether the consoli-
23 dated administrative record omits mate-
24 rials—

26

1 (I) that were before the Federal
2 agency; and

3 (II) that were directly or indi-
4 rectly considered in issuing a Federal
5 authorization.

6 (ii) NO MERITS.—An objection to the
7 consolidated administrative record sub-
8 mitted under clause (i) may not—

9 (I) raise merit arguments; or

10 (II) seek discovery, testimony, or
11 new evidence.

12 (iii) RESOLUTION.—Not later than 60
13 days after the date of publication of the
14 notice under subparagraph (A), the Com-
15 mission shall resolve each objection to the
16 consolidated administrative record sub-
17 mitted under clause (i) and, as necessary,
18 direct limited supplementation of the con-
19 solidated administrative record by the rel-
20 evant Federal agency.

21 (C) CLOSURE.—After all objections to the
22 consolidated administrative record are resolved
23 under subparagraph (B)(iii)—

1 (i) the consolidated administrative
2 record shall be considered final and closed;
3 and

4 (ii) the Commission shall issue a pub-
5 lic written order indicating the consoli-
6 dated administrative record is finalized and
7 closed.

8 (D) FINAL AGENCY ACTION.—The written
9 order of the Commission under subparagraph
10 (C)(ii) shall constitute a final agency action for
11 the purposes of chapter 7 of title 5, United
12 States Code, solely with respect to the contents
13 and completeness of the consolidated adminis-
14 trative record.