

121 FERC ¶ 61,055
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 157

(Docket No. RM07-17-000; Order No. 700)

Revisions to Landowner Notification and Blanket Certificate Regulations

(Issued October 18, 2007)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations to modify landowner notification requirements and to require a noise survey following the completion of projects involving compressor facilities undertaken pursuant to blanket certificate authority. The proposed regulatory revisions are intended to enhance public participation in the Commission's consideration of proposed projects and ensure that compressor projects completed under blanket certificate authority will not have a significant adverse environmental impact.

DATES: The regulatory revisions made in this Final Rule will become effective [insert date 30 days after publication in the **FEDERAL REGISTER**].

FOR FURTHER INFORMATION CONTACT:

Gordon Wagner
Office of the General Counsel
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426
gordon.wagner@ferc.gov
(202) 502-8947

Docket No. RM07-17-000

Michael McGehee
Office of Energy Projects
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426
michael.mcgehee@ferc.gov
(202) 502-8962

Lonnie Lister
Office of Energy Projects
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426
lonnie.lister@ferc.gov
202-502-8587

SUPPLEMENTARY INFORMATION:

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FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Revisions to Landowner Notification
and Blanket Certificate Regulations

Docket No. RM07-17-000

ORDER NO. 700

FINAL RULE

(Issued October 18, 2007)

I. Introduction

1. On June 22, 2007, the Federal Energy Regulatory Commission (Commission) issued a Notice of Proposed Rulemaking (NOPR) to amend its regulations to modify landowner notification requirements and require a noise survey following the completion of projects involving compressor facilities undertaken pursuant to blanket certificate authority.¹ These regulatory revisions are intended to enhance public participation in the Commission's consideration of proposed projects and ensure that compressor projects completed under blanket certificate authority will not have a significant adverse

¹ 72 FR 35669 (June 29, 2007), FERC Stats. and Regs. ¶ 32,616 (2007). The NOPR followed an expansion of the blanket certificate program, see Revisions to the Blanket Certificate Regulations and Clarification Regarding Rates, Order No. 686, 71 FR 63680 (Oct. 31, 2006), FERC Stats. & Regs. ¶ 31,231 (2006), order on reh'g and clarification, Order No. 686-A, 72 FR 37431 (July 10, 2007), FERC Stats. and Regs. ¶ 31,249 (2007), order on reh'g, Order No. 686-B, FERC Stats. and Regs. ¶ 31,255 (2007).

environmental impact. Comments on the NOPR were submitted by the U.S. Department of the Interior (Interior) and the Interstate Natural Gas Association of America (INGAA). This Final Rule responds to the comments and adopts, with minor modifications, the regulatory revisions described in the NOPR.

II. Regulatory Revisions

2. The NOPR discusses proposed changes to the existing regulations regarding landowner notification and compressor noise restrictions. Comments submitted address the latter.

A. Landowner Notification

3. The NOPR discusses expanding the § 157.6(d)(2)(iii) landowner notification requirement. Currently, this requirement directs natural gas companies planning to construct compressor or liquefied natural gas (LNG) facilities to notify all landowners whose property contains a residence within one-half mile of the project site before beginning any construction.² This will be revised to remove the residence qualification, and will instead direct companies to notify all landowners within one-half mile of the site of a planned compressor or LNG project regardless of whether the property contains a residence. This revision should ensure all landowners within one-half mile of a proposed project site will receive notice that will allow them to raise land use issues, including existing non-residential uses as well as planned future uses of undeveloped land.

² See the landowner notification requirements, 18 CFR 157.203(d)(1) and (2), and the definition of affected landowners, 18 CFR 157.6(d)(2)(iii).

B. Noise Survey

4. To ensure that compressor facilities installed under blanket certificate authority will not have significant adverse environmental impacts, compressor facilities must be designed to meet the noise level limits described below. To verify blanket certificate compressor facilities meet these noise level limits, this order will revise § 157.206(b)(5) to require that companies completing a blanket certificate compressor project file a noise survey with the Commission. If this post-project survey shows the facility is emitting excessive noise, the company will have up to one year from the project's in-service date to meet the noise limits. After completing its noise mitigation measures, the company will submit a subsequent noise survey to verify compliance with the noise limits. This same noise survey requirement is routinely applied to compressor facilities installed under case-specific certificate authority.

5. A company may rely on blanket certificate authority to undertake qualifying projects provided: (1) noise-generating equipment installed under blanket certificate authority, whether an entire new compressor station or an addition or modification to an existing station, does not exceed an average day-night sound level (L_{dn}) of 55 decibels (dBA) at a noise sensitive area (NSA) when operating at full load; (2) an addition or modification to an existing compressor station, which is currently emitting noise at an L_{dn} of 55 dBA or less at NSAs, does not cause noise at NSAs to exceed an L_{dn} of 55 dBA; and (3) an addition or modification to an existing compressor station, which is currently emitting noise in excess of an L_{dn} of 55 dBA at NSAs, does not cause noise to increase at NSAs.

III. Comments and Commission Response

6. Comments by Interior question whether an L_{dn} of 55 dBA might adversely impact certain wildlife resources. Comments by INGAA seek clarification on how compressor noise is to be measured.

A. Department of the Interior's Comments

7. Interior points out that 55 dBA was designated by the U. S. Environmental Protection Agency (EPA) as a noise level adequate to protect against speech interference and sleep disturbance for residential, education, and healthcare NSAs.³ Given that the 55 dBA level is based on human activity, Interior is concerned that this level fails to account for impacts on species that may be more sensitive to noise. Interior urges that screening for such species be required for blanket certificate projects and asks the Commission to direct blanket project applicants to contact Interior's Fish and Wildlife Service, along with the appropriate state fish and wildlife agency or state Natural Heritage Database, to identify the presence of threatened or endangered species and noise-sensitive species or habitats in the project vicinity. If there are such species or habitats, Interior would then require the project applicant to seek case-specific certificate authorization.

³ The Commission relied on this EPA designation in conducting its Environmental Assessment (EA) of the blanket certificate program, finding that compressors should not increase ambient noise levels at nearby NSAs above an L_{dn} of 55 dBA, since 55 dBA is "the maximum level which will not affect public health and welfare by interfering with speech or other activities in outdoor areas . . . [and consequently] should also ensure adequate protection for the indoor noise environment." Blanket Certification of Routine Gas Pipeline Transactions, EA at 25 (July 1981), citing EPA's Information on Levels of Environmental Noise Requisite to Protect Public Health and Welfare with an Adequate Margin of Safety (Washington, D.C. 1974).

8. While appropriate to most circumstances, the Commission recognizes that 55 dBA ought not be applied inflexibly or universally.⁴ That said, the Commission finds that potential adverse impacts on species and habitat due to noise are adequately taken into account by the requirement that all blanket certificate projects comply with the Endangered Species Act of 1973 (ESA).⁵ Compliance with the ESA effectively compels a blanket certificate holder to engage in the same screening and consultation that Interior requests for threatened and endangered species. Accordingly, the Commission expects the ESA compliance process will continue to provide the most appropriate means for assessing whether a proposed blanket certificate project's permitted noise level of 55 dBA might have significant adverse impacts on wildlife resources. In addition, the Commission notes that the expanded landowner notification requirement implemented herein should promote consideration of noise impacts on the use of land for non-residential purposes, such as the cultivation of a domesticated noise-sensitive species.

B. INGAA's Comments

9. The NOPR proposed that § 157.206(b)(5)(ii) direct a blanket certificate project sponsor to measure "noise attributable to the operation of the facility at full load."

INGAA seeks clarification on conducting a post-project noise survey, asking whether "the facility" is intended to refer to the particular equipment added or modified under

⁴ The EA reviewing the blanket certificate program noted the possibility that "compressor facilities constructed in some rural areas could degrade a quiet environment because a blanket authorization would require little or no noise abatement in remote or unpopulated areas." *Id.* at 33.

⁵ 16 U.S.C. 1531 et seq.

blanket certificate authorization, or whether “the facility” is intended to include all the facilities, i.e., both existing facilities as well as new or modified facilities located at a particular compressor site. In response to INGAA’s request, we will revise § 157.206(b)(5)(ii) as described below.

10. As a threshold measure, for a compressor facility to qualify for blanket certificate authorization, the facility must be designed to meet an L_{dn} of 55 dBA at NSAs when operating at full load. Requiring that a facility added or modified under blanket certificate authority meet this maximum noise limit is intended to ensure that there will not be a significant adverse environmental noise impact.⁶

11. With respect to noise impacts, the Commission will also consider the composite noise level of a compressor station’s new and existing facilities. This is because a facility that meets an L_{dn} of 55 dBA, when added to a station currently operating an L_{dn} of 55 dBA, can cause the overall noise of the station to exceed an L_{dn} of 55 dBA. Thus, the Commission will require that an addition or modification to an existing compressor station that is operating at or below an L_{dn} of 55 dBA at NSAs must not cause overall noise attributable to the station to exceed an L_{dn} of 55 dBA at NSAs. Further, an addition or modification to an existing compressor station that is operating above an L_{dn} of 55 dBA at NSAs must not cause overall noise attributable to the station to increase at NSAs.

12. To ensure adherence to these noise level limits, the Commission will require a company that relies on its blanket certificate to construct a new compressor station

⁶ See note 3.

facility, or to add or modify a facility at an existing station, to submit a noise survey within 60 days of placing the new or modified facility in service. The company must measure noise attributable to its new or modified facility operating at full load at NSAs. When a new or modified facility is placed in service at an existing compressor station, the company must also measure the overall post-project noise of the station operating at full load. If the measured noise exceeds the specified limits at NSAs, the company must bring its station into compliance within a year of the blanket certificate facility's in-service date. Within 60 days of completing its noise-mitigation measures, e.g., making modifications to noise-generating equipment or erecting a barrier between the station and NSAs, the company must submit a subsequent noise survey to the Commission demonstrating its compliance with the noise level limits.

IV. Information Collection Statement

13. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting, record keeping, and public disclosure requirements (collections of information) imposed by an agency.⁷ Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. The only entities affected by this rule would be the natural gas companies under the Commission's jurisdiction.

14. The information collection requirements in this Final Rule are identified as FERC-537, "Gas Pipeline Certificates: Construction, Acquisition and Abandonment," which

⁷ 5 CFR 1320.11.

identifies the Commission's information collections relating to Part 157 of its regulations, which apply to natural gas facilities for which authorization under section 7 of the Natural Gas Act (NGA) is required, and includes all blanket certificate projects, and FERC-577, "Gas Pipeline Certificates: Environmental Impact Statements," which identifies the Commission's information collections relating to the requirements set forth in National Environmental Policy Act and Parts 2, 157, 284, and 380 of the Commission's regulations, and requires applicants to conduct appropriate studies necessary to determine the impact of the construction and operation of proposed jurisdictional facilities on human and natural resources, and the measures which may be necessary to protect the values of the affected area. These information collection requirements are mandatory.

15. The revised regulations require that companies seeking to construct or alter compressor or LNG facilities notify all landowners within one-half mile of the boundary of the project site. This should necessitate only a nominal additional effort, since companies are already required to identify all landowners of record within one-half mile of the project site, and then notify the subset of those landowners that have a residence on their property. In practice, companies routinely give notice to all identified landowners, rather than take the extra step of segregating properties with residences from those without so as to give notice only to the former. In view of this practice, the Commission expects the time and cost to notify non-residential landowners will prove to be de minimis.

16. The Noise Control Act of 1972 established the requirement that all federal agencies administer their programs to promote an environment free of noise that jeopardizes public health and welfare.⁸ In 1974, the U.S. Environmental Protection Agency, acting to execute its responsibility to coordinate federal research and activities related to noise control, identified an L_{dn} of 55 dBA as necessary to protect against speech interference and sleep disturbance for residential, educational, and healthcare activities. The revised regulations state that a company adding or altering compressor facilities under blanket certificate authority must submit a noise survey within 60 days of placing new facilities in service to demonstrate that noise attributable to the operation of the company's compressors does not exceed an L_{dn} of 55 dBA at nearby NSAs or increase noise at NSAs already in excess of an L_{dn} of 55 dBA. The Commission does not view this as substantially modifying natural gas companies' existing obligations, since the proposed submission of a noise survey simply provides verification of compliance with the existing noise requirement. The same noise survey requirement is routinely applied to compressor projects subject to case-specific NGA section 7 certificate authority.⁹

⁸ 42 U.S.C. 4901, et seq.

⁹ The potential cost savings to the industry that may be realized by enabling projects previously permitted only under case-specific authority to proceed under the expanded blanket certificate program were discussed in the Final Rule in Order No. 686. With respect to the proposed noise survey, the Commission notes that case-specific projects require a noise survey both before and after construction. Thus, the relatively minor cost of conducting a post-construction noise survey for a blanket certificate project is expected to be offset by the benefit of not having to also conduct a noise survey before construction, as would be necessary for a case-specific certificate project.

17. The Commission is submitting these reporting requirements to OMB for its review and approval under § 3507(d) of the Paperwork Reduction Act of 1995.¹⁰ The Commission solicited comments on the need for these regulatory revisions and the accuracy of estimated burden estimates, as well as how the quality, quantity, and clarity of the information to be collected might be enhanced, and any suggested methods for minimizing the respondent's burden. The comments submitted did not specifically address the new reporting requirements; accordingly, the Commission will use the same estimates here as in the NOPR.

18. The Commission estimates it will require 32 hours to complete a noise survey, and expects the additional burden to be modest, given that in 2006 only two compressor projects went forward under blanket certificate authority. For the purpose of estimating burden hours, the Commission anticipates five such projects in the future.

Data Collection	No. of Respondents	No. of Responses/Filings	No. of Hours per Response	Total Annual Hours
FERC-537 (Part 157)	5	5	32	160

Information Collection Costs: The above reflects the total reporting burden associated with the proposed broadening of the landowner notification requirement. Because of the regional differences and the various staffing levels that will be involved in preparing the documentation (legal, technical, and support) the Commission is using an hourly rate of \$150 to estimate the costs for filing and other administrative processes (reviewing instructions, searching data sources, completing and transmitting the collection of

¹⁰ 44 U.S.C. 3507(d).

information). The estimated cost per project is \$4,800, with an estimated annual total of \$24,000.

Title: FERC-537.

Action: Proposed Data Collection.

OMB Control Nos.: 1902-0060 and 1902-0128.

Respondents: Natural gas pipeline companies.

Frequency of Responses: On occasion.

Necessity of Information: Submission of the information is necessary for the Commission to carry out its NGA statutory responsibilities and meet the Commission's objectives of expediting appropriate infrastructure development to ensure sufficient energy supplies while addressing landowner and environmental concerns fairly.

Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 [Attention: Michael Miller, Office of the Executive Director]. Phone: (202) 502-8415, fax: (202) 273-0873, e-mail: michael.miller@ferc.gov or the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission].

V. Environmental Analysis

19. The Commission is required to prepare an EA or an Environmental Impact Statement (EIS) for any action that may have a significant adverse effect on the human

environment.¹¹ In promulgating the blanket certificate program in 1982, the Commission prepared an EA in which it determined that, subject to compliance with the standard environmental conditions, projects under the blanket program would not have a significant adverse environmental impact. In particular, the EA concluded that an L_{dn} of 55 dBA at NSAs would be adequate to avoid interfering with speech or other activities in outdoor areas and ensure adequate protection for the indoor noise environment. As discussed herein, the Commission is expanding landowner notification and requiring the submission of a post-project noise survey for blanket certificate activities involving compressor facilities. Because these actions serve to better inform the public of proposed projects and to further ensure and verify that no blanket certificate project has a significant adverse environmental impact, these regulatory revisions do not constitute a major federal action that may have a significant adverse effect on the human environment.

VI. Regulatory Flexibility Act Analysis

20. The Regulatory Flexibility Act of 1980 (RFA)¹² generally requires a description and analysis of regulations that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such an analysis if

¹¹ Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986-1990 ¶ 30,783 (1987).

¹² 5 U.S.C. 601-612.

regulations would not have such an effect.¹³ Under the industry standards used for purposes of the RFA, a natural gas pipeline company qualifies as "a small entity" if it has annual revenues of \$6.5 million or less. Most companies regulated by the Commission do not fall within the RFA's definition of a small entity.¹⁴

21. This order's regulatory revisions will have no significant economic impact on those entities – be they large or small – subject to the Commission's regulatory jurisdiction under NGA section 3 or 7, and no significant economic impact on state agencies. Accordingly, the Commission certifies that these regulatory revisions will not have a significant economic impact on a substantial number of small entities.

VII. Document Availability

22. In addition to publishing the full text of this document in the Federal Register, the Commission provides all interested persons an opportunity to view and print the contents of this document via the Internet through FERC's website (<http://www.ferc.gov>) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, N.E., Room 2A, Washington D.C. 20426. User assistance is available for FERC's website during normal business hours from FERC's Online Support at 202-502-6652, toll free at 1-866-208-3676, or by e-mail at

¹³ 5 U.S.C. 605(b) (2000).

¹⁴ 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 623 (2000). Section 3 of the Small Business Act defines a "small-business concern" as a business which is independently owned and operated and which is not dominant in its field of operation.

ferconlinesupport@ferc.gov, and from the Public Reference Room at 202-502-8371, TTY at 202-502-8659, or by e-mail at public.referenceroom@ferc.gov.

VIII. Effective Date and Congressional Notification

23. This Final Rule will take effect [insert date 30 days after publication in the **FEDERAL REGISTER**]. The Commission has determined with the concurrence of the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, that this rule is not a major rule within the meaning of section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.¹⁵ The Commission will submit this Final Rule to both houses of Congress and the Government Accountability Office.¹⁶

List of subjects in 18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Acting Deputy Secretary.

¹⁵ See 5 U.S.C. 804(2).

¹⁶ See 5 U.S.C. 801(a)(1)(A).

In consideration of the foregoing, part 157, Chapter I, Title 18, Code of Federal Regulations, is amended as follows:

PART 157--APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

1. The authority citation for part 157 continues to read as follows:

Authority: 15 U.S.C. 717-717w.

2. In § 157.6, paragraph (d)(2)(iii) is revised to read as follows:

§ 157.6 Applications; general requirements.

* * * * *

(d) * * *

(2) * * *

(iii) Is within one-half mile of proposed compressors or their enclosures or LNG facilities; or

* * * * *

3. In § 157.206, paragraph (b)(5)(ii) is redesignated as paragraph (b)(5)(iii) and a new paragraph (b)(5)(ii) is added, to read as follows:

§ 157.206 Standard conditions.

* * * * *

(b) * * *

(5) * * *

(ii) A compressor facility installed under this section must be designed to meet the following noise emissions criteria. For each new compressor station facility, and for each addition or modification to an existing compression station, the blanket certificate holder must file a noise survey with the Secretary within 60 days of placing the facility in service.

(A) If noise emitted from a new compressor facility operating at full load exceeds an L_{dn} of 55 dBA at any noise-sensitive area (NSA), or if an addition or modification to an existing compressor station operating at full load at or below an L_{dn} of 55 dBA at NSAs causes overall noise attributable to the station to exceed an L_{dn} of 55 dBA at an NSA, the blanket certificate holder must come into compliance with an L_{dn} of 55 dBA at NSAs within 1 year of placing the facility in service.

(B) If an addition or modification to an existing compressor station operating at full load above an L_{dn} of 55 dBA at NSAs causes overall noise attributable to the station to increase at an NSA, the blanket certificate holder must act within 1 year of placing the added or modified facility in service to reduce noise at NSAs to the level that existed prior to the addition or modification.

(C) If the initial noise survey demonstrates a need to take action to mitigate noise, within 60 days of completing such action, the blanket certificate holder must file a subsequent noise survey with the Secretary demonstrating that each new compressor station facility, and each addition or modification to an existing compressor station, complies with the noise level limits.

* * * * *