

121 FERC ¶ 61,180
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

CenterPoint Energy Gas Transmission Company

Docket No. CP07-437-000

ORDER DENYING PROTESTS AND AUTHORIZING CONSTRUCTION AND
OPERATION OF FACILITIES UNDER BLANKET CERTIFICATE

(Issued November 16, 2007)

1. On August 25, 2007, CenterPoint Energy Gas Transmission Company (CenterPoint) filed in the above-captioned docket a prior notice request, pursuant to section 7 of the Natural Gas Act (NGA)¹ and sections 157.205 and 157.210 of the Commission's blanket certificate regulations.² CenterPoint seeks authorization to construct and operate a new compressor station on Line AC located near the city of Cove in Polk County, Arkansas. Ms. Susana Bewley and her parents, Stanley G. and Betty L. Griffin, filed letters of protest with the Commission. As a result of the protests and the unlikelihood that attempts to negotiate withdrawal of their protests will be successful, CenterPoint requests a waiver of the 30-day reconciliation period provided for by the blanket certificate regulations in prior notice proceedings.

2. For the reasons discussed herein, we will deny the protest, grant the waiver of the 30-day reconciliation period, and authorize CenterPoint to construct and operate the facilities under its blanket certificate.

Background and Proposal

3. CenterPoint is a Delaware corporation with its principal place of business in Houston, Texas. CenterPoint transports and delivers gas to distributors for resale for ultimate public consumption, to industrial customers for their own use and consumption,

¹ 15 U.S.C. § 717 (2000).

² 18 C.F.R. §§ 157.205 and 157.210 (2007).

and to third party pipeline interconnects located in the States of Arkansas, Kansas, Louisiana, Mississippi, Oklahoma, Tennessee, and Texas.

4. CenterPoint requests, pursuant to the prior notice procedures in sections 157.205 and 157.210 of the Commission's regulations, authorization to construct, own, and operate a new compressor station on Line AC located near the city of Cove in Polk County, Arkansas. CenterPoint proposes to install a Solar Mars 100/C652 Turbine driven Centrifugal Compressor Package and associated ancillary equipment within a 38.5 acre lot owned by CenterPoint. The total compression available will be 14,801 horsepower. The proposed facilities will provide CenterPoint's customers with flexible access to traditional Mid-continent gas supplies and will enhance CenterPoint's infrastructure needed to support current and future natural gas development and production activities across CenterPoint's system. CenterPoint states that if, after gaining some experience in incorporating the compression into its operation, it is determined that there is excess capacity which may be offered for sale to customers, CenterPoint will post that excess capacity as available on its website. CenterPoint estimates that total construction costs will be approximately \$26,257,504.

Notice and Interventions

5. On August 27, 2007, the Commission issued a notice of CenterPoint's prior notice request in accordance with section 157.205(d) of the Commission's regulations. Pursuant to section 157.205(h) of our regulations, authorization to construct and operate qualifying facilities under a blanket certificate is automatic so long as no protests to the activity are filed within 60 days of the date notice is issued by the Commission. If a protest is filed within the 60-day period and it is not withdrawn within 30 days after the 60-day notice period, the prior notice request proceeds as an application under section 7(c) of the NGA for case-specific authorization.³

6. Notice of CenterPoint's prior notice request was published in the *Federal Register* on September 6, 2007 (72 Fed. Reg. 51,220). Within the 60-day notice period provided by the prior notice procedures, the Arkansas Public Service Commission filed a timely, unopposed motion to intervene.⁴ Ms. Bewley and the Griffins filed letters of protest with the Commission.

7. There were no other motions to intervene, notices of intervention or protests to the application.

³ See *id.* §157.205(f).

⁴ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's regulations. *Id.* § 385.214.

The Protests

8. On September 19, 2007, Ms. Bewley of Dover, Arkansas filed with the Commission a timely protest to the proposed compressor station construction, stating that “any building near [her parents’] land would destroy the environment and delicate ecosystem which they have been protecting for the nearly two decades they have lived there.” Ms. Bewley added that her parents’ lives depend on the quiet and solitude they currently enjoy on their land, and that “a move or major disruption would kill them.” Ms. Bewley further stated that despite numerous inquiries, CenterPoint was unable to specify the location of the proposed compressor station but assured her that it would not be on her parents’ property.

9. On September 26, 2007, the Griffins, the owners of the property in question, filed a timely letter of protest with the Commission. In it, the Griffins: (1) denied CenterPoint the use of their property for any purpose, expressed their opposition to CenterPoint operating on or near their property, and requested that CenterPoint refrain from any current or future endeavors that would involve their property; (2) denied CenterPoint access to their property for any purpose, including surveys, without express written consent; (3) suggested alternative locations for CenterPoint’s ventures; (4) expressed their intention to refuse any offer which would subdivide their land or restrict their use of the land in any manner; and (5) requested that their property not be included in any of CenterPoint’s current or future plans.

CenterPoint’s Response

10. The 60-notice period for CenterPoint’s prior notice application ended on October 26, 2007. Thus, the 30-day reconciliation period will end on November 26, 2007. On October 1, 2007, CenterPoint filed a letter with the Commission responding to the protests and requesting that the Commission waive the 30-day reconciliation period.⁵

11. CenterPoint states its project to construct a new compressor station near Cove, Arkansas would be affected by winter weather patterns in the region. Thus, CenterPoint asserts that expeditious processing of its prior notice filing is necessary to enhance the reliability of its system in a timely manner. CenterPoint emphasizes that the capacity of its facilities that can access gas supplies from the Mid-continent region is essentially fully subscribed by its shippers under long-term, firm transportation contracts. In addition, CenterPoint’s supplies that can be accessed by the southern part of its system have been

⁵ Our rules do not permit answers to protests. However, because CenterPoint’s answer provides information that has assisted us in our decision making process, we will, for good cause, waive the regulatory proscription against answers in this case and accept CenterPoint’s response. *See id.* § 385.213(a)(2); *see also Great Lakes Gas Transmission Limited Partnership*, 66 FERC ¶ 61,115 (1994).

significantly reduced and its customers' have seen more restrictions on their access to those supplies. Further, as load on CenterPoint's system has increased, there has also been an increase in the frequency of system maintenance adversely affecting delivery. CenterPoint explains that installing the proposed compressor station near the city of Cove in Polk County, Arkansas will create backup support for Centerpoint's Malvern Compressor Station and help alleviate the bottleneck existing downstream of its Chandler Compressor Station. Consequently, CenterPoint's system will become more reliable and its customers will have access to additional supplies from existing and new gas producing regions in eastern Oklahoma and northwest Arkansas.

12. In its October 1, 2007 letter, CenterPoint also explains that through telephone conversations and an in-person meeting on September 28, 2007 with the protesters, CenterPoint provided them with the following information: (1) the compressor station would not be located on the Griffins' property; (2) CenterPoint would not require access to the property in question; (3) the compressor station would be within a 38.5-acre site owned by CenterPoint; and (4) CenterPoint's property line is approximately half a mile from the Griffins' property line. Moreover, CenterPoint contends that the protesters acknowledged that the compressor station and the construction activities would not impact their property but were still unwilling to withdraw their opposition to the project absent compensation for legal costs and emotional damage. Thus, CenterPoint concludes that it cannot reach a reasonable settlement with the protesters. In addition, CenterPoint does not believe that the protests raise substantive issues because the project will not have an impact on the Griffins in part due to the distance between the compressor station and the Griffin residence. The Griffin residence is located an estimated 4,800 feet from compressor station and is not one of the noise sensitive areas (NSA) identified on CenterPoint's application. It is farther away from the compressor station than any NSA. The nearest NSAs to the compressor station at which noise has been estimated are between 1,000 and 2,800 feet from the compressor station. While there is a potential to hear the noise attributable to the compressor station at the Griffin residence, it will not be significant. Further, the compressor station will be constructed in a manner such that the noise from the station will comply with the Commission's blanket noise regulations that restrict noise to 55 dBA L_{dn} at any NSA.

Discussion

13. Since the facilities to be constructed and operated will be used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, the construction and operation of these facilities are subject to the provisions of section 7(c) of the NGA.

14. CenterPoint has filed a request to construct and operate a new compressor station under its Part 157, Subpart F blanket certificate pursuant to the Commission's prior notice procedures. As holder of a blanket construction certificate, CenterPoint is authorized to undertake various routine activities subject only to certain reporting and notice and protest requirements. The notice and protest provisions are streamlined

procedures intended to increase flexibility and reduce regulatory and administrative burdens. These conditions, while not applicable to activities which are not so minor as to qualify for automatic authorization under the Commission's blanket certificate regulations, nonetheless apply to activities that have relatively little impact on ratepayers, pipeline operations, or the environment such that close scrutiny of the nature involved in case-specific deliberation by the Commission is not warranted to ensure compatibility with the public convenience and necessity.

15. However, because the activities under prior notice procedures are those in which interested parties might have valid concerns, it is necessary that an opportunity be provided for a more thorough review and potential adjudication of controversial aspects of a proposed project. The prior notice procedure's 30-day reconciliation period after a protest has been filed is intended to provide such an opportunity by affording certificate holders an effective means to resolve minor differences without subjecting their proposals to the full panoply of case-specific determination. It is important to note, however, that the Commission fully expects the parties to make a good faith effort to resolve their differences during the reconciliation period. Otherwise, any protest not withdrawn, even though it may wholly lack merit, would remove the prior notice request from the blanket certificate procedures and subject it to full adjudication by the Commission.

16. In the instant matter, the prior notice procedure's 30-day reconciliation period will not expire until November 26, 2007. CenterPoint has explained that its proposed new compressor station is needed to ensure that ability to meet its firm service obligations and that construction needs to commence now so that completion of the station is not delayed by winter weather conditions. Further, CenterPoint has made reasonable efforts to address the concerns raised by Ms. Bewley and the Griffins. However, they have not withdrawn their protests and are not likely to do so by the end of the reconciliation period.

17. In view of the above considerations, we will not wait until the end of 30-day reconciliation to address the protests, which contain statements that are irrelevant and arguments which are not substantiated by any factual, legal, or other objective evidentiary documentation. Ms. Bewley's asserts that building near or on her parents' land would adversely impact the environment. In particular, Ms. Bewley and her parents, the Griffins, express concern that the proposed compressor station would disrupt their quiet and solitude. Ms. Bewley further states that her parents would not survive a major move or disruption of their lives.

18. We have considered the protesters' concerns and conclude that they are unfounded. The requirements for CenterPoint's project, or any other new construction subject to the Commission's Part 157 blanket certifications regulations, are such that potential environmental disruptions are thoroughly evaluated and mitigation procedures are required. CenterPoint will conduct a noise survey at the Griffins' property line to

ensure compliance with the Commission's noise abatement requirements. Further, CenterPoint will be required to implement the standard conditions in section 157.206(b) of the blanket certificate regulations, and the environmental assessment (EA) prepared by Commission staff concludes that these standard conditions will ensure that the Griffins are not significantly affected by noise from operation of the new compressor station.⁶ The Griffins' concerns that CenterPoint's project will somehow utilize their property or result in subdivision of or restrict their use of their property also are unfounded, as the instant CenterPoint project will be built on land currently owned by CenterPoint and not encroach upon the Griffins' property.

19. CenterPoint's proposal, which projects a total cost of approximately \$26 million, meets the project cost limitation for prior notice filings contained in section 157.208 of the Commission's regulations.

20. Thus, CenterPoint's proposal satisfies our prior notice procedural requirements that the proposed facilities be sufficiently routine and have a sufficiently benign impact on the environment by meeting the standard environmental conditions that it should be approved under the streamlined procedures of our blanket certificate regulations.

21. The requirements of the Commission's blanket certificate program establish the parameters for which approval of certain activities is appropriate under the streamlined procedures of the blanket certificate. These requirements are consistent with the Commission's statutory obligations under the NGA and the National Environmental Policy Act of 1969 (NEPA).⁷ Section 157.206 of the Commission's regulations reduces the potential for adverse environmental impact to acceptable levels by virtually ensuring a project will not be a major federal action by requiring the certificate holder to comply with all applicable environmental statutes and regulations. In particular, section 157.206(b)(1) requires that all transactions authorized under a blanket certificate be in full compliance with section 380.15. CenterPoint's proposal has satisfied all limitations and requirements, including all applicable environmental statutes, defined under the prior notice regulations as required by section 380.5(b)(2). Additionally, CenterPoint has received all necessary and requisite environmental clearances from appropriate state and federal resource agencies.

22. The purpose of the prior notice procedures, as we have stated, is to allow interested parties to air legitimate concerns and afford all parties the opportunity to resolve their differences. It is not intended as a vehicle to delay the resolution of matters that have been fully aired, or that lack substantive basis and are thus without merit on

⁶ Office of the Secretary, Federal Energy Regulatory Commission, Docket No. CP07-437-000, Environmental Assessment (EA) 7-8 (Oct. 24, 2007).

⁷ 42 U.S.C. §§ 4321-4370 (2000).

their face.⁸ Under the circumstances of this case, no valid purpose would be served by our waiting until the end of the 30-day withdrawal period to act on the merits of CenterPoint's application. Indeed, allowing the reconciliation period to expire in this instance would only serve to vitiate the prior notice procedures as an effective means of streamlining certain pipeline construction. At the same time, we emphasize that it is incumbent upon pipeline companies to make every reasonable effort to file their prior notice requests to allow sufficient time to accommodate both the 60-day period and, in the event a protest is filed, the 30-day reconciliation period.

23. Accordingly, we find good cause to waive the 30-day reconciliation period and will proceed to the merits of CenterPoint's proposal. We shall treat the filing as an application under section 7(c) as if the 30-day period had already lapsed in order to minimize the delay and burden caused by the protests and to prevent unnecessary delay of CenterPoint's proposed construction activities.⁹

24. It has long been established that a presumption of rolled-in rate treatment uniformly applies to construction projects that qualify for approval under the blanket certificate program without a case-specific analysis of potential system benefits. The 1982 rulemaking adopting the blanket certificate program explained that the rates that would be charged for service over blanket facilities would already have been approved in a previous rate proceeding.¹⁰ The Commission has applied a presumption in favor of rolled-in rate treatment for the costs of blanket certificate projects because of the *de minimus* impact on a pipeline system's overall rates.¹¹ The Commission specifically adopted this presumption in its 1995 *Pricing Policy Statement*,¹² and continued the approach in its 1999 *Certificate Policy Statement*.¹³ In a 2005 prior notice proceeding,

⁸ See, e.g., *Kern River Gas Transmission Co.*, 59 FERC ¶ 61,084 (1992); *Panhandle Eastern Pipeline Co.*, 46 FERC ¶ 61,076 (1989), *reh'g denied* 48 FERC ¶ 61,283 (1989); and *Transcontinental Gas Pipeline Corp.*, 48 FERC ¶ 61,254 (1989).

⁹ Since the protest was not withdrawn, section 157.205(f) provides that CenterPoint's prior notice request be treated as an application for case-specific authority.

¹⁰ See *Interstate Pipeline Certificates for Routine Transactions*, Order No. 234, 47 Fed. Reg. 24254 (June 4, 1982); 47 Fed. Reg. 30724 (July 15, 1982), FERC Statutes and Regulations, Regulations Preambles 1982-1985, ¶ 30,368, at 30,201.

¹¹ See *Tennessee Gas Pipeline Co.*, 82 FERC ¶ 61,081 (1998).

¹² See *Pricing Policy for New and Existing Facilities Constructed by Interstate Pipelines (Pricing Policy Statement)*, 71 FERC ¶ 61,241 (1995).

¹³ See *Certification of New Interstate Natural Gas Pipeline Facilities (Certificate Policy Statement)*, 88 FERC ¶ 61,227 at n.3 (1999).

the Commission specifically found that blanket construction is exempt from the case-specific rate review required in non-blanket certificate proceedings because it is anticipated that blanket facilities will be priced on a rolled-in basis.¹⁴ In its recent rulemaking amending the blanket certificate regulations, which in part raised the cost ceilings for blanket certificate projects on a permanent basis, the Commission determined that it would continue to apply a presumption that blanket certificate costs will qualify for rolled-in rate assessment.¹⁵

25. As explained above, because of the protest to CenterPoint's prior notice filing, the Commission has treated the filing as an application for specific section 7(c) authorization. However, consistent with Commission policy of not granting section 7(c) case-specific authority to construct and operate facilities where such activity may be performed under a blanket certificate, the Commission will authorize CenterPoint to construct and operate the subject facilities under its Part 157 blanket certificate.

26. As stated above, our staff prepared an EA for CenterPoint's proposal to satisfy NEPA requirements. The EA, which was issued and placed in the public record in this proceeding on October 23, 2007, addresses land requirements, visual impacts, and noise.

27. Based on the discussion in the EA, we conclude that if constructed and operated in accordance with CenterPoint's application, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

28. Finally, we note that any state or local permits issued with respect to facilities subject to the jurisdiction of this Commission must be consistent with the conditions of any certificate issued by this Commission authorizing construction and operation of those facilities. The Commission's practice is to encourage cooperation between interstate pipelines and local authorities. This does not mean, however, that state and local agencies, through application of state or local law, may prohibit or unreasonably delay

¹⁴ See *Tennessee Gas Pipeline Co.*, 110 FERC ¶ 61,047 (2005), *reh'g denied*, 111 FERC ¶ 61,094 (2005).

¹⁵ See *Revisions to the Blanket Certificate Regulations and Clarification Regarding Rates*, 117 FERC ¶ 61,074 at P 38 (2006) (explaining that the validity of the presumption could be addressed in an NGA section 4 rate proceeding).

construction or operation of facilities approved by this Commission.¹⁶ CenterPoint shall notify the Commission's environmental staff by telephone or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies CenterPoint. CenterPoint shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

29. There was received and made a part of the record in this proceeding all evidence, including the application, supplements, and exhibits thereto, submitted in support of the authorization sought herein, and in consideration thereof,

The Commission orders:

(A) CenterPoint is authorized to construct and operate the facilities described in this order pursuant to its Part 157 blanket certificate, all as more fully set forth in this order.

(B) The protests by Ms. Bewley and Mr. and Mrs. Griffin are denied.

(C) CenterPoint shall notify the Commission's environmental staff by telephone and/or facsimile of any environmental noncompliance identified by other federal, state or local agencies on the same day that such agency notifies CenterPoint. CenterPoint shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

By the Commission. Commissioner Wellinghoff dissenting in part with a separate statement.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁶See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

CenterPoint Gas Transmission Company

Docket No. CP07-437-000

(Issued November 16, 2007)

WELLINGHOFF, Commissioner, dissenting in part:

The Commission's regulations provide that authorization to construct and operate qualifying facilities under a pipeline's blanket certificate is automatic so long as no protests to the activity are filed within 60 days of the date that notice of the activity is issued by the Commission. However, if a protest is filed within that 60-day period and it is not withdrawn by the end of a subsequent 30-day reconciliation period, then the Commission considers the requested authorization on a case-specific basis. These rules are important to balancing the goal of expediting blanket certificate eligible construction with the need to provide due process for those with interests in such projects.

In this proceeding, two protests were filed against CenterPoint's plans to construct a new compressor station pursuant to its blanket certificate. The 30-day reconciliation period is scheduled to end on November 26, 2007. Citing concerns about the potential effect of winter weather on its plans, CenterPoint has asked the Commission to curtail that reconciliation period. In today's order, the Commission grants that request.

It is exceedingly unusual for the Commission to curtail the reconciliation period associated with protests against prior notice blanket certificate authorization requests. I agree with the Commission's statement in today's order that "it is incumbent upon pipeline companies to make every reasonable effort to file their prior notice requests to allow sufficient time to accommodate both the 60-day period and, in the event a protest is filed, the 30-day reconciliation period." I do not believe that CenterPoint has adequately justified its request for the Commission to set aside that basic requirement, and I would not grant CenterPoint's request to curtail the reconciliation period.

For this reason, I respectfully dissent in part from today's order.

Jon Wellinghoff
Commissioner