

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Parts 153, 157, and 375

(Docket Nos. RM03-4-000 and AD02-14-000; Order No. 633)

Emergency Reconstruction of Interstate Natural
Gas Facilities Under the Natural Gas Act

(Issued May 19, 2003)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations to enable natural gas interstate pipeline companies to replace mainline facilities using a route other than the existing right-of-way, and to commence construction without prior notice and without project cost constraints, when immediate action is required to restore service in an emergency due to a sudden unanticipated loss of natural gas or capacity for protection of life or health or for maintenance of physical property. In addition, the Commission is revising reporting requirements so that a natural gas company, in responding to an emergency, would submit a report describing intended actions to the Commission in advance of commencing construction, rather than reporting actions taken after the fact, as is currently the case. The Commission revises its regulations to state that the requirement to provide landowners with 30-day prior notice is met if all affected landowners grant easements. The Commission is also amending its regulations to specify that the revisions related to emergency reconstruction will apply to facilities subject to

Section 3 of the Natural Gas Act (NGA). Finally, the Commission is amending its regulations to delegate authority to waive certain landowner notice requirements and to make certain judgments in the field regarding the construction and operation of gas facilities. An important objective of the final rule is the reconciliation of the Commission's regulatory responsibilities under its enabling statutes and federal environmental and safety laws with the need to protect persons and property.

EFFECTIVE DATE: The rule will become effective **[insert date 45 days after publication in the FEDERAL REGISTER]**.

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Emergency Reconstruction
of Interstate Natural Gas Facilities
under the Natural Gas Act

Docket Nos. RM03-4-000
and AD02-14-000

ORDER NO. 633

FINAL RULE

(Issued May 19, 2003)

Introduction

1. The Federal Energy Regulatory Commission (Commission) is amending Part 157, Subpart F, of its regulations to enable natural gas interstate pipeline companies to replace mainline facilities using a route other than the existing right-of-way, and to commence construction without 45-day prior notice and without project cost constraints, when immediate action is required to restore service in an emergency due to a sudden unanticipated loss of natural gas or capacity for protection of life or health or for maintenance of physical property. In addition, the Commission is revising reporting requirements so that a natural gas company acting under Part 157 in responding to an emergency would submit a report describing intended actions to the Commission in advance of commencing construction, rather than reporting actions taken under Part 157 after the fact, as is currently the case. The Commission revises Part 157 to state that the

requirement to provide landowners with 30-day prior notice is met if all affected landowners grant easements. The Commission is also amending Part 153 to specify that the regulatory revisions related to emergency reconstruction will apply to facilities subject to Section 3 of the Natural Gas Act (NGA). Finally, the Commission is amending Part 375 of its regulations to delegate authority to waive certain landowner notice requirements and to make certain judgments in the field regarding the construction and operation of gas facilities. An important objective of the proposed rule is the reconciliation of the Commission's regulatory responsibilities under its enabling statutes and federal environmental and safety laws with the need to protect persons and property.

Background

2. On January 17, 2003, the Commission issued a notice of proposed rulemaking (NOPR),¹ seeking comments on how it might facilitate the restoration of gas service in an emergency due to a sudden unanticipated loss of gas or capacity threatening loss of life, impairment of health, or damage to property. The NOPR was prompted, in part, by Commission and energy industry attention to operational safety concerns, in particular, the potential impacts of deliberate damage to energy facilities. On April 22, 2002, staff from the Commission and from the Department of Transportation Office of Pipeline Safety (OPS) jointly convened a technical conference to consider whether and how to clarify, expedite, and streamline permitting and approvals for interstate pipeline reconstruction

¹Emergency Reconstruction of Interstate Natural Gas Facilities Under the Natural Gas Act, 68 FR 4120 (Jan. 28, 2003), FERC Stats. & Regs. ¶ 32,567 (Jan. 17, 2003).

following a sudden unanticipated service disruption.² Efforts to ensure the security of the nation's energy infrastructure have generally focused on maintaining the physical integrity of facilities and preparing to respond to accidents, such as excavation that breaches a buried pipe, natural disasters, such as earthquakes and landslides, and foreseeable equipment failure. The conference broadened this focus to consider how best to respond to damage due to a deliberate effort to disrupt the flow of natural gas.

3. At the conference, Commission and OPS staff provided an overview of current regulatory processes and presented examples of recent natural gas emergencies.

Conference participants – representing federal, state, and local agencies, energy industry sectors, trade groups, and interested individuals – suggested various means to speed the reconstruction of interstate gas facilities, including: revising existing legislative mandates, revising Commission regulations, and enhancing coordination among federal, state, and local entities. A transcript of the conference and the comments subsequently submitted are contained in the record in Docket No. AD02-14-000.³

²On the following day, staff from the Commission and from the Department of Energy (DOE) jointly convened a technical conference to consider whether to or how to clarify, expedite, and streamline the reallocation of gas supplies in the event of a sudden unanticipated service disruption. That proceeding, in Docket No. AD02-15-000, is not addressed here.

³The conference comments are available on FERC's website at <http://ferc.gov> using the Federal Energy Regulatory Records and Information System (FERRIS) to access filings in Docket No. AD02-14-000. The Interstate Natural Gas Association of America (INGAA) submitted scenarios describing how interstate pipelines might respond to various types of facility-related emergencies. Because of security concerns associated with disclosing this information, these scenarios are not included in the public record in Docket No. AD02-14-

4. In general, it appears the Commission's existing authorities and policies are sufficient, and sufficiently flexible, to enable pipelines to respond to emergencies in a timely manner. However, in view of the April 2002 conference, and comments in response to the January 2003 NOPR, the Commission has identified circumstances under which its present practices could constrain a pipeline from implementing a timely response. Accordingly, as discussed below, the Commission is amending its regulations to better enable pipelines to recover from an emergency interruption in service.

Comments in Response to the January 2003 NOPR

5. Timely comments in response to the NOPR were filed by the American Gas Association (AGA); Duke Energy Gas Transmission (Duke); INGAA; KM Pipelines;⁴ KO Transmission Company (KO Transmission); MidAmerican Energy Company (MidAmerican); NiSource Pipelines (NiSource);⁵ Northern Natural Gas Company (Northern Natural); the Process Gas Consumers Group (Process Gas Consumers); the Public Service Commission of the State of New York (New York PSC); and Williston Basin Interstate Pipeline Company (Williston Basin). Untimely comments were submitted

³(...continued)

000; however, while the particulars of the scenarios are not described in detail in the public record, the results are discussed in general.

⁴KM Pipelines consists of Kinder Morgan Interstate Gas Transmission, LLC; Natural Gas Pipeline Company of America; Trailblazer Pipeline Company; and TransColorado Gas Transmission Company.

⁵NiSource consists of Columbia Gas Transmission Corporation; Columbia Gulf Transmission Company; Granite State Gas Transmission, Inc.; and Crossroads Pipeline Company.

by the United States Department of the Interior, Fish and Wildlife Service (FWS) and the Public Utilities Commission of Ohio (Ohio PUC), which we accept, as to do so will not delay, disrupt, or otherwise prejudice this proceeding.

Revisions to the Commission's Regulations

6. In the NOPR, we requested comments on the adequacy of the Commission's existing authority to expedite the restoration of service following an emergency gas disruption, and whether the expansion of authority proposed would be sufficient to meet pipelines' emergency reconstruction requirements. In the NOPR, we described a situation where a pipeline could experience damage to its facilities, and then be unable to gain access to the site of the damage (for example, access may be obstructed in the case of a landslide, or restricted in the case of an investigation). In such circumstances, we seek to ensure that pipelines have authority adequate to be able to restore service rapidly. In particular, we question whether a traditional NGA Section 7(c) certificate application will prove practical, since even with accelerated processing of the application, the optimal time line to take action will inevitably be extended. An NGA Section 7(c)(1)(B) temporary certificate may be issued with dispatch, but may be inadequate if repairs require more than minor enlargements or extensions of existing facilities. Under § 2.55 of our regulations, a pipeline can replace or repair facilities, but only within the footprint

of the existing facilities, and where costs are expected to exceed \$7.5 million,⁶ only after 45 days advance notice to the Commission. In view of these constraints, we have elected to expand the scope of construction currently allowed under Part 157, Subpart F, of our regulations.

7. Almost all interstate gas pipelines now hold Part 157 blanket certificates that permit the automatic construction, operation, abandonment, replacement, and rearrangement of certain "eligible facilities." To facilitate pipelines' capability to act expeditiously to respond to an emergency,⁷ we propose to expand the scope of "eligible facilities" to include mainline facilities that require a new right-of-way, and system modifications such as adding compression, that could compensate for impaired gas flows. Further, for emergency reconstruction, we propose to lift the current \$21 million project cost limit and forego the prescribed 45-day public notice requirement.⁸ In addition to the 45-day public notice, a gas company acting under blanket authority is required to make a good faith effort to notify all affected landowners 30 days prior to commencing construction or at the time it initiates easement negotiations. We retain this landowner notification requirement, but as stated in

⁶This amount is adjusted annually. See 18 CFR Section 157.208(d) (2002), Table 1, column 1.

⁷We add Section 157.202(b)(13) to define an emergency as "a sudden unanticipated loss of gas supply or capacity that requires an immediate restoration of interrupted service for protection of life or health or for maintenance of physical property."

⁸Id. The cost cap is adjusted annually. Currently, the 45-day prior notice only applies to projects costing more than \$7.5 million.

the January 2003 NOPR, once a company has contacted landowners, we will consider a company request to waive the remainder of the 30-day landowner notice period.⁹

Defining an Emergency

8. The expanded reconstruction authority applies to activities required to restore service for protection of life or health or for maintenance of physical property in an emergency due to a sudden unanticipated loss of gas or capacity. INGAA and Duke are concerned that under this criteria, "eligible facilities" as defined under § 157.202 of the Commission's regulations would not include repairs or replacement to respond to damage that did impair a company's ability to meet contractual commitments, but that did not present a direct threat to life, health, or property.

9. NiSource objects to describing an emergency as a "sudden unanticipated" loss of gas or capacity, characterizing "sudden" as an unnecessary qualification. NiSource would curtail the definition of an emergency to an "unanticipated" loss of gas or capacity.

10. The Process Gas Consumers Group, representing industrial end users, believes that the economic harm a factory may incur due to an interruption in gas deliveries should be construed as property damage qualifying for reconstruction authorization under the emergency blanket regulations. To this end, the Process Gas Consumers Group endorses expanding § 157.205(a) and § 157.208 of our regulations to include reconstruction "activity required to restore service in an emergency due to a sudden unanticipated loss of

⁹We note that Section 157.203(d)(3) of our regulations provides for exceptions to the landowner notification requirements.

natural gas supply or capacity in order, for example, to prevent loss of life, impairment of health, economic harm to end users, or damage to property."

Commission Response

11. Restricting the expanded Part 157 authority to emergencies that require an immediate response for protection of life or health or for maintenance of physical property is deliberate. Circumstances that frustrate a pipeline's capability to meet certain customer needs – but that do not otherwise pose a direct threat to life, health, or property – are most appropriately addressed, as has been the case until now, under the terms of a pipeline's existing tariff and our non-emergency rules and regulations. Rather than expanding the definition of emergency to include economic damages, as the Process Gas Consumers Group proposes, we suggest such damages, particularly business losses due to disrupted gas deliveries to end users, may be managed by being insured against, or by employing dual fuel capabilities, or by addressing parties' responsibilities in the terms of service. We seek to keep emergencies focused on threats to life, health, or property, and including economic damage in the definition of emergency risks is an inappropriate expansion of the new regulatory provisions, given that a reasonable argument might be made that any gas curtailment constitutes a threat to economic welfare. In view of this, we will not enlarge the definition of emergency to include economic damage.

12. To emphasize that an emergency be precipitated by events which a company could not be expected to predict or prepare for, we retain both "sudden" and "unanticipated." We note this definition of emergency is consistent with that of § 284.262(2) of our

regulations, which also defines an emergency as a "sudden unanticipated loss of natural gas supply or capacity."

Eligible Facilities

13. INGAA, Duke, and Williston Basin observe that the NOPR focuses on reconstruction that necessitates a pipeline's deviating from its existing right of way, and ask that in the final rule the Commission explicitly apply the expanded emergency blanket authority, *i.e.*, waiver of prior notice and lifting the project cost cap, to construction within the existing right of way. INGAA and Duke propose that the § 157.202(b)(2)(i) definition of "eligible facilities" read as follows:

Emergency replacements are any restoration of pre-existing mainline capacity, including the reconstruction of mainline facilities either inside or outside the existing right of way and the modification of facilities to rearrange gas flows or increase compression for the primary purpose of restoring pre-existing service and/or capacity to protect life, prevent impairment of health, or damage to property due to the sudden unanticipated damage to mainline facilities.

14. The New York PSC observes that in addition to rebuilding to replace damaged facilities, it may be possible, and potentially more efficient, to restore essential service by making modifications to undamaged portions of a pipeline's system. To allow for such modifications, the New York PSC would expand "eligible facilities" to include construction intended to redirect gas flows on a pipeline's system.

15. To ensure that the expanded authority is employed prudently, FWS recommends that § 157.202(B)(2)(i) apply “only when the construction within the existing footprint may be prohibited due to natural disasters, or acts of national security.”

16. KM Pipelines state that from an operational standpoint, compressors and storage facilities are integral parts of mainline systems, and so argues that compressors and storage facilities should be explicitly included within the meaning of mainline facilities. Duke asks that the Commission clarify that the emergency blanket provisions will cover conventional storage facilities.

17. INGAA requests the Commission specify that when replacing damaged facilities, a pipeline need not duplicate the damaged facilities, but may make use of components of "substantially similar capacity." INGAA points out that emergency repairs can be made most rapidly by using supplies readily available in inventory. INGAA therefore requests regulatory leeway to use substantially similar accessible supplies when duplicate replacement supplies are not readily available. INGAA observes that § 2.55(b)(ii) of the Commission’s regulations already specifically accepts the substitution of approximately equivalent components.

Commission Response

18. Our aim is to enable a company to recover from an emergency as soon as possible, and we assume recovery will be quickest (and most cost effective) when a company can repair or replace damaged facilities within the original footprint, since such efforts can be expected to minimize the need for easements and environmental approvals. Thus, we

expect that reconstruction within the right-of-way will, when possible, be preferred.

However, although an existing right-of-way may remain accessible, we can envision circumstances where new construction along a new right-of-way could be the more rapid means to restore service. We therefore want to offer pipelines options when rebuilding, and for this reason, we will not adopt the FWS proposal that we permit pipelines to use the new blanket authorization to reconstruct on a new right-of-way only when the existing right-of-way is unavailable. We clarify that although the NOPR emphasized the applicability of expanded emergency blanket authority to reconstruct outside of an existing right-of-way, we also intend for emergency blanket authorization to apply to reconstruction within the existing right-of-way. Consequently, we find no need to alter the revised regulatory language as suggested by INGAA, Duke, and Williston Basin.

19. As proposed, we will add "the modification of facilities to rearrange gas flows or increase compression" to § 157.202(b)(2)(i), as we find this phrase better expresses our intent to make it possible for a damaged pipeline to rely on the new emergency blanket provisions to modify its system as needed to restore service. We are concerned that absent this additional description of potential authorized actions, the emergency blanket provisions could be construed as restricting a pipeline to either the repair or replication of damaged facilities, with the sole exception of rerouting a mainline. Such an interpretation could constrain a pipeline's emergency recovery efforts, thereby prolonging service shortfalls, and thereby limit the utility of the new blanket regulations and undermine our aim to speed recovery efforts. Thus, if a pipeline finds it is able to restore interrupted

service faster by adding new facilities – such as compression at an undamaged site or equipment to enhance storage withdrawals – than by replacing or repairing damaged facilities, we want pipelines to have emergency blanket authority to add such facilities. Further, if a pipeline can safely adjust operating parameters or can rearrange facilities on its system in order to compensate for a service interruption, the emergency blanket regulations should permit such modifications. Accordingly, we will add "the modification of facilities to rearrange gas flows or increase compression" to those actions permitted under emergency blanket authority. This revision may be interpreted as encompassing the redirection of gas flows, as requested by the New York PSC.

20. We note that in an emergency, pipelines are to focus on the immediate restoration of services essential for protection of life or health or for maintenance of physical property; thus, "the modification of facilities" applies only those modifications devoted to this priority. In reviewing pipelines' advance notice of emergency reconstruction, we will consider whether the described activities are consistent with this priority.

21. INGAA and Duke propose to employ emergency authorization to restore pre-existing service. We stress that unless a company's inability to fulfill its service contracts presents a direct threat to life, health, or property, no emergency exists, and where no emergency exists, it would be inappropriate to invoke emergency authority. We reiterate our observation in the NOPR that this "enlargement in the scope of permissible actions under Part 157, Subpart F, is restricted to actions necessary to restore service after an interruption due to an emergency event," and does not apply to "circumstances [that] would

not qualify as an emergency.”¹⁰ However, provided an incident causing an interruption in service qualifies as an emergency, we clarify that a company may rely on the expanded blanket emergency provisions to replace or rearrange facilities in order to reinstate service up to the level it previously provided.

22. We believe it is reasonable to permit a pipeline to employ the most readily available materials in an emergency. The public interest in restoring service should not wait on the delivery of an order for new materials that match the damaged facilities. Accordingly, we clarify that in an emergency a pipeline may use components of substantially similar capacity. The current regulations implicitly permit such substitutions. As INGAA comments, “the ‘substantially similar capacity’ allowance is the Section 2.55(b)(ii) standard.”¹¹ Section 157.202(b)(2)(i) of our regulations expands upon this, allowing “replacements that do not qualify under § 2.55(b) of this chapter because they will result in an incidental increase in the capacity of main line facilities.” Provided replacement facilities that differ from the original facilities result in no more than an incidental increase in capacity, we expect such replacements will be acceptable under the expanded emergency blanket certificate authorization. We note that the

¹⁰FERC Stats. & Regs. ¶ 32,567, at 34,683.

¹¹Specifically, Section 2.55(b)(ii) states that “replacement facilities will have a substantially equivalent designed delivery capacity.”

§ 157.207 report of intended action under emergency blanket authority should serve, inter alia, to inform the Commission of circumstances that merit the use of replacement facilities that are not a one-to-one match for a system's existing facilities.

Notice Requirements

23. INGAA, Duke, and NiSource support the proposal to omit the § 157.203(a) 45-day public notice period for emergency reconstruction, and urge the Commission to similarly exempt pipelines from the § 157.203(d) 30-day landowner notice requirement. Noting the Commission's stated willingness to consider requests to waive the 30-day landowner notice, the parties nevertheless view this approach as uncertain and time consuming, and favor omitting the § 157.203(d) landowner notice. INGAA and Duke contend this notice is unnecessary, as it is duplicative of a pipeline's obligation to either obtain voluntary easements from landowners or obtain easements through condemnation proceedings.

24. Northern Natural believes that in an emergency that threatens life, health, or property, the public interest in prompt remedial action should outweigh the landowners' interest in notification.¹² Therefore, Northern Natural recommends that the Commission modify § 157.203(d)(3) to exclude landowner notice in an emergency; with emergency construction limited to the minimal disturbance needed to restore service and to landowners directly impacted. Alternatively, Northern Natural suggests that landowner notification and construction be allowed to take place concurrently.

¹²Northern Natural speculates that in an emergency, property owners may be unavailable and communications unreliable.

25. Duke, Northern Natural, and KM Pipelines are concerned that efforts to negotiate in good faith with landowners to obtain easements prior to exercising eminent domain authority could delay reconstruction. Recognizing that the mechanics and pace of this judicial process are outside of the Commission's domain, Duke asks the Commission to "acknowledge . . . the need for and benefit of an expedited eminent domain process" in an emergency, so as to encourage courts to facilitate expedited entry onto lands and Congress to modify statutory limitations. Northern Natural similarly urges the Commission to coordinate regulatory and statutory changes with other agencies to expand powers of eminent domain and blanket waivers, and "employ its maximum allowable authority to expedite the process in an emergency." KM Pipelines encourage the Commission to seek legislative revisions so that in an emergency, environmental statutes and related regulations may be waived to allow for immediate reconstruction. KM Pipelines propose that such revisions provide for the Commission to declare an emergency exists, after which pipelines will be able to obtain an expedited court condemnation order to gain access to land, with a separate determination on compensation to follow at a later date.

Commission Response

26. It is necessary to find the proper balance between facilitating the immediate restoration of service in an emergency, via a new right-of-way if necessary, and safeguarding the due process rights of affected landowners, but we believe eliminating landowner notice shifts the balance too far. The landowner notice requirements protect the

public interest by ensuring that property rights are respected and that any necessary new easements adhere to applicable state procedures.¹³ Thus, we will retain the § 157.203(d) requirement that a pipeline make a good faith effort to provide all affected landowners with 30-day notice. We note that regardless of the Commission's regulations, landowners must be contacted for the purpose of obtaining an easement, and this contact may serve as notice for the purpose of complying with § 157.203(d) of our regulations.

27. We suggest that the greater the magnitude and urgency of an emergency, the more persuasive pipelines may be in negotiating voluntary easements. Involuntary easements compelled through the exercise of the right of eminent domain are subject to state law, and we suggest that the nature of the emergency may influence the willingness of state authorities to intervene to expedite their procedures. In view of this, we are not willing to forego prior notice to landowners, as requested, in its entirety.

28. We nevertheless believe that modifications may be made to the landowner notice requirements to speed the process while retaining relevant landowner protections. Under § 157.203(d) of our current regulations, a landowner, once notified in accordance with § 157.6(d)(2) and § 157.203(d)(2) of our regulations, may waive the 30-day aspect of the prior notice requirement. We will expand this and revise § 157.203(d) to state that "For activity required to restore service in an emergency, the 30-day prior notice period is satisfied in the event a company obtains all necessary easements." We believe that once a

¹³Note that landowner notice is not required under the exemptions specified in Section 157.203(d)(3) of the Commission's regulations.

company has reached voluntary agreements with all landowners affected by a new right-of-way, there is no remaining landowner interest to be protected by awaiting the expiration of the remainder of the 30-day prior notice period. In addition, we will provide the Director of the Office of Energy Projects (OEP) with the authority to waive landowner notice requirements, as necessary or appropriate, by adding a new § 375.308(w)(5), to state that the OEP Director, or the Director's designee, has the delegated authority to take appropriate action on "Requests for waiver of the landowner notification requirements in § 157.203(d) of this chapter."

29. We agree with those comments that stress the need for pipelines to be able to obtain new right-of-way to build around damaged portions of pipe. That said, as commenters observe, the mechanics and pace of the process of obtaining a new easement by right of eminent domain are beyond the scope of this Commission's jurisdiction.¹⁴ Consequently, we are unable to commit to effecting changes in other agencies' regulations or our own statutory authority. We nevertheless can and do commit to working with local, state, and federal authorities to coordinate and expedite emergency reconstruction efforts.

Advance Report of Emergency Reconstruction Activities

30. In the NOPR, we noted that under the existing § 157.207 reporting requirements, companies submit a retrospective annual report describing the projects completed under

¹⁴We specifically requested views on the need for further or broader action by the Commission or Congress to inform our consideration of changes we might make to ensure the continued integrity of the energy infrastructure.

blanket authority during the prior year. Because the expanded emergency blanket authority provisions omit the requirement that companies give 45-day prior notice for public comment on projects costing more than \$7.5 million, we modified this section to require that companies intending to rely on emergency blanket authority submit an advance report to the Commission describing their preparations and plans before commencing reconstruction.

31. NiSource does not object to notifying the Commission prior to proceeding with emergency reconstruction activities, as long as the Commission acknowledges and accepts that the initial description of the problem and remedial plan may be inexact and subject to change in light of the incomplete information and urgency inherent in an emergency.

32. Northern Natural observes that § 260.9(b) allows companies to deliver notices of gas service disruptions to the Commission "by any electronic means" and asks that if the Commission retains an emergency advance report requirement, it should permit pipelines to deliver this report by electronic means. Further, Northern Natural seeks clarification that the advance report filing applies only to emergency activities under the proposed expanded blanket authority, and will not be interpreted to apply to activities that come under current no-notice blanket authority. Northern Natural worries that an emergency may disrupt communications between pipelines and governmental agencies.

Commission Response

33. We accept that in attempting to restore service in response to an emergency, a pipeline's preparation and planning will not be as thorough and predictable as would be the

case in describing a proposed non-emergency construction project. Accordingly, we do not expect to hold a pipeline to the precise parameters set forth in the advance report describing its intended emergency reconstruction. Further, while we will expect a pipeline to submit as complete and accurate a report as is practical, as stated in the NOPR, we recognize that it will not be possible “to supply all the information routinely set forth in a standard annual blanket report.”¹⁵ It is in part in anticipation of inevitable infirmities in an advance report that we expect a company undertaking emergency reconstruction to consult with the Commission during reconstruction, and to that end, where necessary, the Commission will have a staff member present on site.

34. In response to Northern Natural, we observe that the existing § 260.9 requirement to report serious service interruptions occurring on a pipeline system is not affected by the new regulations set forth herein. We acknowledge the utility of allowing an advance report, described in the new § 157.207 general reporting requirements, to be filed by electronic means. Accordingly, we will provide an electronic filing option for these advance reports via the eFiling link on the Commission website at www.ferc.gov. Companies filing advance reports in accordance with the emergency blanket certificate provisions should select the filing type "Notice/Report of Intent to Use Emergency Procedures" from the eFiling System Filing Type Selection menu for Gas. If the report cannot be electronically filed due to file size or content restrictions (e.g., large maps) in the Commission's eFiling system,

¹⁵FERC Stats. & Regs. ¶ 32,567, at 34,686.

then the report may be submitted on CD ROM. We will post procedures for filing these advance reports on our website and update those procedures as the eFiling system expands to accommodate more complex filings.

35. We clarify that the requirement for advance notice only applies, as described in § 157.207, “[i]n the case of an emergency due to a sudden unanticipated loss of natural gas supply or capacity.” When a pipeline is acting under existing non-emergency blanket authority, the existing annual report requirement applies, as do the existing project cost limit and 45-day prior notice requirements. Pursuant to the existing blanket regulations, non-emergency projects under the current \$7.5 million cost cap qualify for automatic no-notice authorization.

Compliance with Environmental Obligations

36. INGAA urges that the Commission work with other relevant governmental entities in order to coordinate the environmental review process to expedite permits and approvals needed to effect pipeline repairs. INGAA observes that for emergency actions subject to an EIS – but not for emergency actions subject to an EA – the Commission may consult with CEQ with the aim of developing alternative NEPA compliance arrangements.¹⁶ To address this regulatory asymmetry, INGAA proposes that the Commission expressly waive its requirement that an EA be prepared in the case of an emergency.

¹⁶See 40 CFR 1506.11 (2002).

37. NiSource suggests that "[t]he presence of a Commission Staff inspector (with stop work authority)" on site may prove "inconsistent with the emergency response action environment that will dominate the construction project."¹⁷ However, if the Commission chooses to send a representative to oversee emergency reconstruction, NiSource requests that the representative have broad authority to grant on-site variances, including variances of the Commission's environmental construction guidelines.

38. The Ohio PUC advocates deploying Commission staff to the affected site to coordinate with other federal, state, and local agencies to review routing and environmental mitigation. FWS recommends Commission staff be present and actively involved where reconstruction cuts a new right-of-way.

39. FWS asks that we clarify the applicability of the environmental compliance conditions of § 157.206(b) to actions proceeding under the expanded emergency blanket provisions. In addition, FWS proposes that the Commission introduce an emergency action plan into its certification of interstate pipeline facilities that would include the consideration of alternative right-of-way routes, surveyed in advance to determine areas of environmental sensitivity, and list contact numbers for the appropriate agencies' field offices.

Commission Response

¹⁷NiSource's Comments, at 6 (February 27, 2003).

40. Under § 380.4(a)(21) of our regulations, certain activities authorized under the Part 157, Subpart F, blanket certificate regulations are categorically excluded from environmental review. However, construction projects subject to prior notice under § 157.208(b) normally require an EA,¹⁸ In addition, in all cases, projects constructed under blanket certificate authorization are subject to the environmental conditions of § 157.206(b). That section requires that the certificate holder adopt specific siting and maintenance provisions, that the project activities are consistent with all applicable environmental statutes, regulations, and compliance plans, and that the project "shall not have a significant adverse impact on a sensitive environmental area."

41. Construction performed under the emergency rule adopted herein is subject to the environmental requirements of § 157.206(b). Among other things, these provisions require all authorized activities to be consistent with applicable environmental laws, impose limits on compressor noise, require companies to adopt the environmental mitigation conditions set out in § 380.15 of the Commission's regulations, and prohibit any activity that would have an adverse effect on a sensitive environmental area. To the extent that a company cannot comply with the § 157.206(b) requirements, the company cannot rely on blanket certificate authority to complete the project, and would have to seek separate authorization. In addition, as provided in the new § 385.308 (x) (7) discussed below, the regulations established herein specifically delegate to the OEP Director the authority to ensure the

¹⁸See 18 CFR 380.5(b)(2) (2002).

protection of environmental resources during the course of construction. This includes authority to employ staff with stop work authority to monitor construction activities.

Under all of these circumstances, we find that a project undertaken in accordance with these expanded emergency blanket regulations, including the specified environmental limitations, will not constitute a major federal action significantly affecting the quality of the human environment and will not require a separate EA prior to construction.

42. We do not share NiSource's concern that having Commission Staff on site might impede emergency reconstruction efforts. To the contrary, we expect the presence of Commission Staff with authority to ensure compliance with environmental mitigation measures, including the authority to grant on-site variances to enable a company to adopt alternative means to meet environmental requirements, will speed reconstruction efforts. Accordingly, we will amend our § 375.308 regulations to specify that a staff member designated by the OEP Director, present on the emergency construction site as necessary or appropriate, shall have delegated authority sufficient to ensure environmental protection. Specifically, we will add a new § 375.308(x)(7), to state that the OEP Director, or the Director's designee, has the delegated authority to "Take whatever steps are necessary to ensure the protection of all environmental resources during the construction or operation of natural gas facilities, including authority to design and implement additional or alternative measures and stop work authority."

43. Recognizing that recovery from a gas emergency will call for actions and authorizations by entities other than this Commission, comments plead for a plan for inter-

governmental interaction. The nature of an emergency as a sudden unanticipated event makes advance identification of the relevant authorities that will need to be involved in responding to an emergency, and the role each will play, impractical. Nevertheless, we can name those regional entities that are most likely to be involved in recovery efforts, and as a first step to facilitate communication and coordination, we will make contact information for these entities available via our website.¹⁹

44. FWS requests clarification with respect to § 157.206 of our regulations. As stated in the NOPR, the applicable conditions set forth in § 157.206(b) describe environmental requirements that must be satisfied as a prerequisite to construction under both the existing blanket authority and the expanded emergency blanket authority. FWS suggests that the Commission's certification authorization could incorporate an emergency action plan that

¹⁹FWS, in response to the NOPR, invites the Commission to contact its "appropriate regional office to expedite and facilitate a coordinated emergency response," which we expect to do. With respect to intergovernmental coordination in an emergency, as discussed in the NOPR, we expect the Department of Energy's Office of Energy Assurance to play a role in overseeing energy industry equipment stockpiles and mutual aid pooling and exchange programs; identifying critical facilities, equipment, and personnel; establishing communications protocol; and developing security and contingency plans. In addition, we anticipate the Department of Homeland Security will coordinate response resources in the event of a terrorist attack or other disaster. Further, pursuant to § 16(a)(1) of the Pipeline Safety Improvement Act of 2002, an interagency committee, headed by CEQ, with the Commission among its members, is charged "to develop and ensure implementation of a coordinated environmental review and permitting process in order to enable pipeline operators to commence and complete all activities necessary to carry out pipeline repairs" expeditiously. To the extent changes to the Commission's rules may be necessary to address safety concerns, we expect the interagency committee called for by this Act will provide a vehicle for identifying the relevant issues. We believe that this Commission can best support intra- and inter-governmental and industry coordination by contributing to and participating in these efforts.

would include surveying alternative routings. To a certain extent, we already do so in our NEPA consideration of alternatives to a proposed project. We agree with the principle that it is prudent to be prepared; however, since there is no way to predict if, when, or where damage might occur along the vast array of interstate gas facilities, we find it impractical to attempt to undertake an environmental inventory of possible alternative routing in advance of an actual incident. However, we agree with FWS that reconstruction efforts can be expedited by having relevant entities' contact information readily available, and to this end, we will compile, post, and update such information on our website.

Self-Implementation v. Prior Authorization

45. As proposed, under the expanded emergency blanket authority, a pipeline can invoke the expanded blanket authority, inform the Commission of its intended emergency reconstruction activities, and unless the Commission objects, go forward. In the NOPR we asked whether affirmative Commission authorization or a short review period (e.g., three days) should be required before a pipeline would be permitted to act under emergency blanket authority.

46. INGAA, Duke, Northern Natural, KM Pipelines, Williston Basin, and KO Transmission state that to be able to respond as rapidly a possible in an emergency, blanket authorization for construction outside of an existing right-of-way should be self-implementing. These parties see no need for the Commission to first verify that an emergency exists, and then approve a pipeline's proposed emergency response, before permitting a pipeline to act.

47. INGAA believes that there is no cause for the Commission to assess a pipeline's reconstruction proposal for a period of time before breaking ground, because the Commission may rely on a representative on site to oversee repairs. Williston Basin agrees, and adds that the on-site Commission representative, in conjunction with the advance report describing emergency activities, should provide the Commission with adequate information and oversight.

48. Instead of granting pipelines self-implementing authority to undertake emergency repairs outside an existing right-of-way, FWS and the Ohio PUC propose the Commission should first declare that an emergency requiring immediate action exists, with the Commission's declaration serving as the trigger and authorization for emergency reconstruction activities. FWS recommends that the Commission have five calendar days from receiving notice of an emergency interruption in service to decide if circumstances merit rebuilding along a new right-of-way.

49. KO Transmission recommends allowing pipelines to commence reconstruction prior to contacting the Commission.²⁰ If an emergency incident occurs when Commission offices are closed, KM Pipelines propose permitting a pipeline to go forward with construction, with a report describing its remedial action to be submitted when

²⁰Specifically, KO Transmission suggests adding the qualification "or currently underway," at the end of the proposed Section 157.207(i) requirement that pipelines submit reports "describing emergency activities to be undertaken;" i.e., effectively eliminating reporting in advance of commencing reconstruction.

Commission offices reopen. Alternatively, KN Pipelines suggest the Commission provide for some means of filing a report on emergency reconstruction when its offices are closed.

50. Instead of submitting a prospective plan of reconstruction to the Commission, the Process Gas Consumers Group suggests the Commission designate a contact person with the authority to immediately approve or disapprove emergency reconstruction activities. In the event of disapproval, the company could then submit its plan to the Commission, with the Commission taking up to three days to review the plan and the rationale for initial disapproval by the designated staff member.

51. NiSource does not object, in principle, to obtaining Commission confirmation that an emergency exists, as long as doing so does not delay the pipeline's response. To this end, NiSource suggests the Commission create a "rapid response" staff, capable of confirming that an emergency exists, assisting in formulating a plan to reconstitute service, and providing waivers as warranted – all within a 24- to 36-hour time frame. NiSource contends that involving the Commission in this manner could preclude after-the-fact challenges to the pipeline's emergency actions.

52. MidAmerican and the New York PSC endorse the proposal for prior notice to the Commission. The New York PSC believes it is prudent for the Commission to verify that the circumstances in fact constitute an actual emergency, and to assess the scope and impact of the proposed response. MidAmerican is concerned that if no-notice self-implementation is permitted, pipelines might take the opportunity to upgrade, rather than merely replace or repair, their damaged facilities. MidAmerican adds that in view of the

public interest in a rapid restoration of interrupted service, in no circumstances should the Commission's review of a pipeline's advance report filing take more than three days.

Commission Response

53. In view of the comments, we will limit the revisions to our blanket certificate regulations to those proposed in the NOPR, and not require either Commission affirmation that emergency conditions exist or a time-out interval during which we review a pipeline's proposed emergency response. In effect, we will allow pipelines self-implementing authority to act to immediately reconstitute service for the protection of life or health or for maintenance of physical property in an emergency due to a sudden unanticipated loss of natural gas or capacity. We retain the requirement that a pipeline submit an advance report of intended emergency reconstruction activities. In part, advance notice in an emergency serves the same purpose as the public notice requirement does for construction under a blanket certificate in a non-emergency in that it enables the Commission to confirm that the planned activities are consistent with environmental, safety, and land acquisition requirements. In addition, the Commission can consider whether the planned activities are narrowly tailored to restoring service as soon as possible and ensure that reconstruction will not include any system modifications that are not essential to alleviate threats to life, health, or property. Once an advance report is submitted, a company may proceed with its emergency reconstruction activities. Our consideration of the company's notice of planned reconstruction, and identification of any necessary modifications, will proceed concurrently with reconstruction activities.

54. In an emergency, in the interests of safety and environmental protection, a company acts immediately to limit damage and stabilize its system, and the new advance report provision is unrelated to actions taken in the context of this initial emergency response. The new advance report provision only comes into play after a company has isolated damaged facilities, assessed the status of its system, and formed a plan for recovery. Because currently effective provisions already authorize companies to act in an emergency and are effectively self-implementing, asking a company to describe how it intends to restore interrupted service in no way inhibits companies' existing capability (and obligation) to respond promptly to threats to the integrity of their facilities.²¹ We have yet to encounter a situation whereby a company is prevented from immediately undertaking essential action in response to an emergency because Commission offices are closed. Hence, we do not anticipate a need to provide a means to present an advance report of planned reconstruction during non-business hours. However, if we find a delay in communicating with the Commission has inhibited urgently needed action, whether it be action pursuant to this expanded emergency blanket authority or in another time-critical context, we will seek a means to remedy any such delay and can do so in a way that supplements this rule.

²¹Given gas companies' existing authority to act to stabilize their system's facilities after a disruption in service, we expect the expanded blanket emergency authority will only be called upon in extreme and unambiguous emergency circumstances. Consequently, we do not expect companies to invoke blanket emergency authority unless it is the only regulatory option to restore service for the protection of life or health or for maintenance of physical property.

Range of Reconstruction Activities

55. INGAA and Duke propose the Commission modify Part 153 to specifically apply the emergency reconstruction provisions to import, export, and LNG terminal facilities.

INGAA explains that because these facilities are subject exclusively to NGA Section 3, and not NGA Section 7, such facilities would be unaffected by the proposed expansion of the Part 157 blanket certificate regulations.

56. MidAmerican would have the Commission expand the scope of the proposed rule to include not only authority for a pipeline to rebuild its own damaged facilities, but also for a damaged pipeline to make use of undamaged (or less damaged) facilities of another pipeline in the same region, or where more efficient in terms of time and cost, undertake new construction on another pipeline system's facilities to provide additional capacity to meet its own customer needs.

Commission Response

57. We strive to respond with dispatch when any portion of the energy infrastructure is damaged, including facilities subject exclusively to NGA Section 3. We have adopted and applied certain NGA Section 7 conditions governing construction, operation, and rates to ensure that NGA Section 3 facilities are in the public interest, and we will do so in this case

to enable timely repairs in the event of damage to such facilities.²² To this end, we add § 153.13, to state that "The provisions of subpart F of part 157 of this chapter that permit reconstruction for the purpose of immediately restoring interrupted service for the protection of life or health or for maintenance of physical property in an emergency due to a sudden unanticipated loss of gas supply or capacity are applicable to facilities subject to Section 3 of the Natural Gas Act."

58. We are not persuaded that there is a need for the Commission to coordinate multiple pipelines' cooperative response to an emergency, as MidAmerican proposes. We expect that the existing Part 284, Subpart I, regulations governing emergency gas sale, transportation, and exchange transactions, are adequate to enable one pipeline to rely on another to assist to respond to an emergency gas shortfall.²³

Declaration of an Emergency

59. In the NOPR, we asked if expanded emergency blanket authority should be restricted, and apply only in response to emergencies due to natural disasters or deliberate damage. INGAA, AGA, Duke, Northern Natural, Process Gas Consumers Group, Shell Gas Transmission, NiSource, Williston Basin, the New York PSC, and KO Transmission

²²This ensures that in an emergency, LNG facilities that are subject exclusively to NGA Section 3, or subject exclusively to NGA Section 7, or subject to both sections, can employ the expanded emergency blanket provisions.

²³A gas disruption so severe and so sustained that remedial actions under the Commission's regulations prove unavailing, or conditions that cripple the Commission's or the industry's communication capabilities, would likely constitute a natural gas supply emergency, and trigger application of the Defense Production Act, 50 U.S.C. App. 2061, et seq., which provides for federal coordination and direction.

maintain that regardless of the cause of a sudden unanticipated loss of gas or capacity, the effect is the same, namely, an urgent need to restore service. Accordingly, they ask that the Commission clarify that the proposed revisions will apply regardless of whether an emergency is the result of a natural disaster, equipment failure, human error, accident, or deliberate damage.

60. MidAmerican would restrict the applicability of the expanded blanket authority to “an emergency situation or act of deliberate damage.” For reconstruction requiring a new right-of-way, FWS would restrict expanded blanket authority specifically to natural disasters and acts of deliberate damage.

Commission Response

61. Comments convince us that it is appropriate to focus not on cause, but on effect. Consequently, we will not restrict the expanded blanket authority to emergencies attributable to deliberate damage. Besides, in the aftermath of an incident that interrupts service, it could prove counterproductive to have to first establish, for example, whether it was a meteor or a missile that breached a gas line. Thus, regardless of the reason, in an emergency due to a sudden unanticipated loss of gas or capacity, when immediate action is required for the protection of life or health or for maintenance of physical property, the new emergency blanket regulations will apply.

INFORMATION COLLECTION STATEMENT

62. The Office of Management and Budget (OMB) regulations require that OMB approve certain information collection requirements imposed by agency rule.²⁴ This rule will not impact information collection. Accordingly, there is no cause to submit this rule to OMB for review under Section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. § 3507(d).

ENVIRONMENTAL ANALYSIS

63. The Commission is required to prepare an EA or EIS for any action that may have a significant adverse effect on the human environment.²⁵ The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.²⁶ The actions herein fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.²⁷ Therefore, an environmental assessment is unnecessary and has not been prepared in this rulemaking.

REGULATORY FLEXIBILITY ACT [ANALYSIS OR CERTIFICATION

²⁴5 CFR Part 1320 (2002).

²⁵Order 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).

²⁶18 CFR 380.4 (2002).

²⁷See 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27) (2002).

64. The Regulatory Flexibility Act of 1980 (RFA)²⁸ requires agencies to prepare certain statements, descriptions, and analyses of proposed rules that will have significant economic impact on a substantial number of small entities. Agencies are not required to make such an analysis if a rule would not have such an effect. The Commission does not believe that this rule would have such an effect on small business entities, since the amendments to our regulations apply only to interstate pipelines, most of which are not small businesses. Accordingly, pursuant to Section 605(b) of the RFA, the Commission certifies that this rule will not have a significant adverse impact on a substantial number of small entities.

DOCUMENT AVAILABILITY

65. 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/or print the contents of this document via the Internet through FERC's Home Page (<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, DC 20426.

66. From FERC's Home Page on the Internet, this information is available in the Federal Energy Regulatory Records Information System (FERRIS). The full text of this document is available on FERRIS in PDF and WordPerfect format for viewing, printing, and/or downloading. To access this document in FERRIS, type the docket number excluding the last three digits of this document in the docket number field.

²⁸5 U.S.C. 601-612.

67. User assistance is available for FERRIS and the FERC website during normal business hours by contacting FERC Online Support by e-mail at FERCOnlineSupport@ferc.gov or by telephone at 866-208-3676 (toll free) or TTY at 202-502-8659.

EFFECTIVE DATE AND CONGRESSIONAL NOTIFICATION

68. These regulations are effective [**insert date 45 days after publication in the FEDERAL REGISTER**].

69. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a "major rule" as defined in Section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of subjects

18 C.F.R. Part 153

Exports, Imports, Natural gas, Reporting and recordkeeping requirements

18 C.F.R. Part 157

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

18 C.F.R. Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act

By the Commission.

Docket Nos. RM03-4-000 and AD02-14-000

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(S E A L)

Magalie R. Salas,
Secretary.

In consideration of the foregoing, the Commission amends parts 153, 157, and 375 of Chapter I, Title 18, Code of Federal Regulations, as follows.

PART 153 -- APPLICATIONS FOR AUTHORIZATION TO CONSTRUCT, OPERATE OR MODIFY FACILITIES USED FOR THE EXPORT OR IMPORT OF NATURAL GAS

1. The authority citation for part 153 continues to read as follows:

Authority: 15 U.S.C. 717b, 717o; E.O. 10485, 3 CFR, 1949-1953 Comp., p. 970, as amended by E.O. 12038, 3 CFR, 1978 Comp., p. 136, DOE Delegation Order No. 0204-112, 49 FR 6684 (February 22, 1984).

2. Section 153.13 is added, to read as follows:

§ 153.13 Emergency reconstruction.

The provisions of subpart F of part 157 of this chapter that permit reconstruction for the purpose of immediately restoring interrupted service for the protection of life or health or for maintenance of physical property in an emergency due to a sudden unanticipated loss of gas supply or capacity are applicable to facilities subject to section 3 of the Natural Gas Act.

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, 3301-3432; 42 U.S.C. 7101-7352.

2. In §157.202, the last sentence in paragraph (b)(2)(i) and paragraph (b)(2)(ii)(C) are revised, and a new paragraph (b)(13) is added, to read as follows:

§157.202 Definitions.

* * * * *

(b) Subpart F definitions. * * *

(2)(i) * * * Replacements for the primary purpose of creating additional main line capacity are not eligible facilities; however, replacements and the modification of facilities to rearrange gas flows or increase compression for the primary purpose of restoring service in an emergency due to sudden unforeseen damage to main line facilities are eligible facilities.

(ii) Exclusions: * * *

(C) A facility, including compression and looping, that alters the capacity of a main line, except replacement facilities and facility modifications covered under paragraph

(b)(2)(i) of this section; * * *

* * * * *

(13) Emergency means a sudden unanticipated loss of gas supply or capacity that requires an immediate restoration of interrupted service for protection of life or health or for maintenance of physical property.

* * * * *

3. In § 157.203, paragraph (d)(1), insert the following sentence after the last full sentence ending "the notice has been provided.":

§ 157.203 Blanket certification.

* * * * *

(d) Landowner notification.

(1) * * * For activity required to restore service in an emergency, the 30-day prior notice period is satisfied in the event a company obtains all necessary easements. *

* *

* * * * *

4. In § 157.205, paragraph (a) is revised to read as follows:

§ 157.205 Notice procedure.

(a) Applicability. No activity described in §§ 157.208(b), 157.211(a)(2), 157.214 or 157.216(b), except for activity required to restore service in an emergency, is authorized by a blanket certificate granted under this subpart, unless, prior to undertaking such activity:

* * * * *

5. In § 157.207, the introductory text is revised to read as follows:

§ 157.207 General reporting requirements.

On or before May 1, or each year, or in the case of emergency reconstruction activity, prior to any activity, the certificate holder must file, in the manner prescribed in §§

157.6(a) and 385.2011 of this chapter, an annual report signed under oath by a senior official of the company, that lists for the previous calendar year:

* * * * *

6. In § 157.208, paragraph (a) is revised to read as follows:

§ 157.208 Construction, acquisition, operation, replacement, and miscellaneous rearrangement of facilities.

(a) Automatic authorization. If the project cost does not exceed the cost limitations set forth in column 1 of Table I, under paragraph (d) of this section, or if the project is required to restore service in an emergency, the certificate holder is authorized to make miscellaneous rearrangements of any facility, or acquire, construct, replace, or operate any eligible facility. The certificate holder shall not segment projects in order to meet the cost limitations set forth in column 1 of Table I.

* * * * *

PART 375 -- THE COMMISSION

7. The authority citation for part 375 continues to read as follows:

Authority: 5 U.S.C. 551-557; 15 U.S.C. 717-717w, 3301-3432; 16 U.S.C. 791-825r, 2601-2645; 42 U.S.C. 7101-7352.

8. Section 375.308 is revised as follows:

(a) in paragraph (w)(3), the word "and" is removed;

(b) in paragraph (w)(4), the period at the end of the sentence is removed and a semicolon is inserted in its place;

(c) paragraph (w)(5) is added,

(d) in paragraph (x)(5), the word "and" is removed;

(e) in paragraph (x)(6), the period at the end of the sentence is removed and a semicolon is inserted in its place; and

(f) paragraph (x)(7) is added to read as follows:

§ 375.308 Delegations to the Director of the Office of Energy Projects.

* * * * *

(w) * * *

(5) Requests for waiver of the landowner notification requirements in § 157.203(d) of this chapter.

* * * * *

(x) * * *

(7) Take whatever steps are necessary to ensure the protection of all environmental resources during the construction or operation of natural gas facilities, including authority to design and implement additional or alternative measures and stop work authority.

* * * * *