

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suede G. Kelly.

CenterPoint Energy Gas Transmission Company

Docket No. CP04-102-000

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

(Issued August 9, 2004)

1. On April 7, 2004, CenterPoint Energy Gas Transmission Company (CenterPoint) filed a prior notice request pursuant to its Part 157, Subpart F blanket certificate and the prior notice procedures in section 157.211 of the Commission's blanket certificate regulations to construct and operate a delivery tap and related facilities in Sebastian County, Arkansas to deliver gas to the MacSteel Division of Quanex Corporation (MacSteel). The proposed facilities will enable MacSteel to receive service directly from the interstate pipeline, bypassing its current service from Arkansas Oklahoma Gas Corporation (AOG), a local distribution company (LDC). AOG and the City of Barling, Arkansas filed timely protests to the application. For the reasons discussed below, we will deny the protests and authorize CenterPoint to construct and operate the facilities under its blanket certificate. The proposal is in the public interest because it provides MacSteel with increased service options and will enhance competition.

Proposal and Background

2. In support of the request, MacSteel, a manufacturer of steel bar products, states that it continuously looks for ways to lower its costs to ensure that its products remain competitive in what it calls a highly competitive market. At the present time, MacSteel receives the natural gas supplies used in its operations from AOG. MacSteel states that, after reviewing its options, it determined that it could lower its gas acquisition costs through a direct connection to an interstate gas pipeline. MacSteel and CenterPoint have entered into an agreement for the delivery of 3,500 Dth a day of natural gas to MacSteel's Sebastian County, Arkansas plant facilities, effective August 1, 2004.

3. CenterPoint seeks authority here to construct and operate a delivery point on its existing Line BT-14 to enable it to provide this gas service to MacSteel. Specifically, CenterPoint proposes to construct and operate a 4-inch tap, flow control valve, approximately 40 feet of 3-inch piping, and a 4-inch meter station. The meter station and flow control valve would be constructed on a 50-foot by 50-foot lot adjacent to CenterPoint's existing right of way. CenterPoint acquired this area from MacSteel, which cleared and graded the land prior to CenterPoint's acquisition. The tap will be installed within the existing Line BT-14 right-of-way. The 3-inch piping will connect the meter with the tap. CenterPoint estimates that these new facilities will cost approximately \$110,774.

4. Line BT-14 consists of approximately 129 miles of 12-inch pipe originally used for the transportation of oil. The Commission issued a certificate to CenterPoint (then known as Arkla Energy Resources) to acquire and operate the line in 1988.¹ When Arkla purchased the line, it had already been converted to gas use. Because CenterPoint has had no requests for service, an 11-mile segment on one end of Line BT-14, on which the new delivery point would be located, has remained inactive up to this time.² CenterPoint states, however, that it has properly maintained the line in full compliance with U.S. Department of Transportation (DOT) regulations so that it would be available for service and has obtained all necessary local, state, and federal permits for operation of the line segment. The line segment has at all times contained a blanket of nitrogen to protect the pipe, and in 1996, CenterPoint, pursuant to DOT requirements, installed additional ground bed to enhance cathodic protection of the inactive segment.

Interventions and Procedural Motions

5. Notice of CenterPoint's request was published in the *Federal Register* on April 21, 2004 (69 Fed. Reg. 21519). Motions to intervene were filed by AOG, the Arkansas Public Service Commission (Arkansas PSC), the City of Barling, and MacSteel. Timely

¹ See Arkla Energy Resources, 44 FERC ¶ 61,020 (1988).

² When CenterPoint purchased the line in 1988, the western 23 miles of the line were inactive. In 1991, CenterPoint activated 11 of the 23 miles to install a tap to receive gas from an independent gas producer. Upon activation of the 11-mile segment involved here, one mile of Line BT-14 on the end of the line will remain inactive.

filed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214.

6. AOG and the City of Barling filed protests as well.³ CenterPoint filed an answer to AOG's pleading. AOG filed a motion to reject the answer and MacSteel's intervention. AOG also filed its own answer to CenterPoint. CenterPoint and MacSteel, in turn filed answers to AOG.

7. AOG's protest requests that we reject CenterPoint's application summarily. As grounds for rejection, AOG contends that CenterPoint wrongly assumes that it has appropriate certificate authority to operate Line BT-14, that CenterPoint's environmental filing is inadequate, and that the new facilities and service would wastefully duplicate existing facilities and services and interfere with the regulation of state rates by the Arkansas PSC.

8. AOG has raised issues that the Commission will address in this proceeding. Rejection of the filing would be appropriate only where the filing is patently a nullity as a matter of substantive law. AOG has failed to demonstrate that CenterPoint's application is either deficient on its face or a substantive nullity.⁴ Therefore, AOG's request for summary rejection is denied.

9. AOG and the City of Barling request an evidentiary hearing. Section 7 of the NGA provides for a hearing when an applicant seeks a certificate of public convenience and necessity, but does not require that all such hearings be formal, trial-type hearings. An evidentiary, trial-type hearing is necessary only where there are material issues of fact

³ Section 157.211 of the Commission's regulations authorizes a Part 157, Subpart F blanket certificate holder to construct and operate certain delivery point facilities. Under section 157.205, authorization is automatic so long as no protest is filed within 45 days of the date notice is issued by the Commission. In the event a protest is filed and not withdrawn within 30 days after the 45-day notice period, the prior notice request proceeds as an application under section 7(c) of the Natural Gas Act (NGA). Neither AOG nor the City of Barling has withdrawn its protest.

⁴ *Municipal Light Boards v. FPC*, 450 F.2d 1341 (D.C. Cir. 1971).

in dispute that cannot be resolved on the basis of the written record.⁵ Neither AOG nor the City of Barling has raised a material issue of fact that cannot be resolved on the basis of the written record. The written evidentiary record provides a sufficient basis for resolving the issues relevant to this proceeding. The Commission has satisfied the hearing requirement by giving interested parties an opportunity to participate through evidentiary submission in written form,⁶ and we will deny their requests for evidentiary hearing.

10. In its motion to reject CenterPoint's answer, AOG contends that the Commission's rules do not allow answers to protests, and that CenterPoint's pleading raises new issues and attempts to introduce new evidence. Although our rules do not permit this kind of responsive pleading,⁷ our rules also provide that we may, for good cause, waive this provision.⁸ We find good cause to do so in this instance in order to insure a complete record in this proceeding.

11. Contrary to AOG's assertions, CenterPoint's pleading does not improperly introduce new evidence; CenterPoint's statements respond directly to arguments made by AOG in its protest. It is AOG, instead, that introduces new arguments and facts regarding environmental, safety, and competitive issues that it did not include in its protest, as required by our rules. Nonetheless, for the same reason that we are allowing CenterPoint's answer, we will allow and address AOG's new arguments below. We will also allow CenterPoint's and MacSteel's responses to AOG's filing. Each side has now had ample opportunity to refine the issues.

12. AOG requests that we reject MacSteel's intervention request filed May 28, 2004, as untimely because it was filed after May 6, 2004, which AOG states was the filing

⁵ *See, e.g.,* Southern Union Gas Co. v. FERC, 840 F.2d 964, 970 (D.C. Cir. 1988); Cerro Wire & Cable Co. v. FERC, 677 F.2d 124 (D.C. Cir. 1982); Citizens for Allegan County, Inc. v. FPC, 414 F.2d. 1125, 1128 (D.C. Cir. 1969).

⁶ *Moreau v. FERC*, 982 F.2d 556, 568 (D.C. Cir. 1993).

⁷ 18 C.F.R. § 385.213(a)(2).

⁸ 18 C.F.R. § 385.101(e).

deadline for intervention requests established by the Commission in its April 15, 2004 notice. The Commission's regulations provide for a 45-day period for the filing of any protests.⁹ In accordance with the regulations, the Commission's notice of the application specifically stated that, "Any person ... may within 45 days after issuance of the instant notice by the Commission, file ... a motion to intervene or notice of intervention" Interventions were thus due on June 1, 2004, and MacSteel's intervention was timely. The May 6, 2004 date in the notice to which AOG refers pertains to the filing of comments, not interventions.

Protests and Answers

Centerpoint's Authority to Operate Line BT-14

13. AOG contends that CenterPoint has no authority to operate the 11-mile segment of Line BT-14 that CenterPoint would activate for service to MacSteel. AOG asserts that when CenterPoint's predecessor Arkla obtained its certificate to operate the 129-mile pipeline in 1988, one of the conditions to the order issuing the certificate was that operations commence within one year of the acquisition.¹⁰ AOG argues that because CenterPoint (or Arkla) has not operated the 11-mile segment since its acquisition, the company did not satisfy the certificate condition, and the certificate did not become effective. Even if the certificate condition had been satisfied and the certificate had become effective, AOG argues that CenterPoint has effectively abandoned the 11-mile segment through its non-use. AOG asserts that, if the Commission finds the line to be abandoned, it should require CenterPoint to request new certificate authorization.

CenterPoint's Answer

14. CenterPoint answers that it completed necessary construction and began operating 106 miles of Line BT-14 within the applicable 12-month period after certification. The company introduced the nitrogen blanket into the remaining portion of the line, including the 11-mile segment involved here, to maintain the line safely in a ready status in the

⁹ 18 C.F.R. § 157.205(d).

¹⁰ Arkla Energy Resources, 44 FERC ¶ 61,020 (1988) ("... all construction and acquisition shall be completed and service shall commence within 12 months from the date of this order.")

event of a request for service. CenterPoint states that it has not abandoned the line segment, but has instead ensured that the segment is capable of meeting requests for service. MacSteel has now made such a request. CenterPoint asserts that it has fulfilled and continues to fulfill the certificated purpose of Line BT-14.

Environmental and Safety Review

15. AOG urges that the Commission require CenterPoint to provide an expanded environmental report that takes into account CenterPoint's proposal to activate the 11-mile segment, as well as the proposed delivery point. AOG argues that the activation of this segment of Line BT-14 and construction of the delivery point are interdependent parts of the same project, and that the whole project, not just the delivery point, is subject to the Commission's environmental review. Accordingly, AOG states, the Commission must prepare an environmental assessment addressing issues that it asserts are raised by activation of the 11-mile line segment.

16. AOG argues that there are a number of safety and pipeline integrity concerns associated with activation of the involved portion of Line BT-14, arising from the fact that the line segment has never been used for the transportation of gas and the fact that the line runs close to a number of structures, especially a gas station and a convenience store in the City of Barling. AOG claims that the presence of these structures violates CenterPoint's own Operating and Maintenance Plan. AOG also asserts that CenterPoint has not specifically informed the Commission how it will comply with DOT safety regulations, including its new integrity management rules for high consequence areas, when it activates Line BT-14. Moreover, argues AOG, the Commission should review the safety aspects of activating Line BT-14 because it is in the best position to balance safety and economic concerns. AOG further argues that CenterPoint has not provided notice to affected landowners located along the involved segment of Line BT-14 in violation of section 157.203(b) of the Commission's regulations, and did not provide an analysis of environmental issues in the manner required by section 157.208(c)(9) of the Commission's regulations.

CenterPoint's Answer

17. CenterPoint answers that, contrary to AOG's suggestion, it is not requesting authority to activate the 11-mile segment of Line BT-14 on which the delivery point will be constructed because it already holds a certificate to operate that portion of the line. CenterPoint is also not requesting authority to convert use of the pipeline from oil to gas. That conversion, it notes, occurred prior to Arkla's acquisition of the pipeline. CenterPoint states that the safe and reliable operation of the activated portions of Line BT-14 demonstrates the success of the conversion of the pipe from petroleum to gas

transportation. CenterPoint states that the only environmental issues before the Commission in this proceeding relate to the delivery point. CenterPoint argues that it has fully complied with the Commission's environmental requirements in section 157.206 of the Commission's regulations for blanket certificate projects and provided the Commission with the information it needs to evaluate the proposed delivery point project.

18. Walter L. Ferguson, CenterPoint's vice-president of operations, states that CenterPoint hydrostatically tested the entire Line BT-14 when it acquired the line in 1988, and has maintained the line in accordance with DOT's safety regulations ever since. He avers that CenterPoint has continuously kept the 11-mile segment filled with protective nitrogen, and in 1996 installed additional ground bed to enhance the cathodic protection of the segment. In activating the line to provide the proposed service to MacSteel, CenterPoint would raise the pressure of the line to an operating pressure of 500 to 540 psig, which Mr. Ferguson states is well below its maximum allowed operating pressure of 899 psig. CenterPoint acknowledges its responsibilities under DOT's recently issued pipeline integrity management rules for high consequence areas,¹¹ and in anticipation of the new rule's requirements, it will again hydrostatically test the segment to assure that it can operate safely at the proposed pressures.

19. As part of its DOT-required Operating and Maintenance Plan, CenterPoint states that it has in place and adheres to a written policy addressing encroachments into CenterPoint's rights-of-way. The plan, in pertinent part, states that "no permanent structure will be allowed on the Company's right-of-ways that may obstruct maintenance or immediate access to the pipeline." CenterPoint states that there are several structures predating its certificate located close to Line BT-14. When it purchased the line, it determined that the existing structures did not obstruct maintenance or immediate access to the pipeline. Since, that time, it says, CenterPoint has monitored the right-of-way, and no additional structures have been built on it. It states, moreover, that DOT has

¹¹ Under the new rules, pipeline operators must develop integrity management programs for gas pipelines located where a leak or rupture could do the most harm (called high consequence areas). The rule requires pipelines to perform ongoing assessments of pipeline integrity and to repair and remediate their pipelines as necessary and to implement preventative and mitigative actions. *See Pipeline Safety: Pipeline Integrity Management in High Consequence Areas (Gas Transmission Pipelines*, 68 Fed. Reg. 69,778 (2003), 49 C.F.R. pt. 192).

conducted routine compliance audits since CenterPoint acquired the line segment, and has not identified any safety, operations, and/or maintenance concerns.

The Line BT-14 Easement Through Barling

20. At the time Line BT-14 was constructed, a 3,300-foot portion of the line crossed a part of the Fort Chaffee military reservation. Subsequently, the U.S. Government sold the land and the accompanying easement to the City of Barling. When Line BT-14 was constructed in the early 1950's, the original owner obtained an easement for a pipeline across this property for a period of 50 years. This term expired in April 2004. Although CenterPoint attempted to negotiate an extension, the City of Barling put the easement out for public bid, and awarded the easement to AOG, the highest bidder. AOG claims that CenterPoint cannot operate this portion of the pipeline because it no longer holds an easement.

CenterPoint's Reply

21. CenterPoint explains that it offered to pay the City of Barling the same amount it has negotiated for an adjacent easement across land owned by the Fort Chaffee Redevelopment Authority. CenterPoint avers that it informed the City of Barling that it would not engage in a bidding contest with AOG. CenterPoint states that because it holds a certificate from this Commission authorizing operation of the pipeline, it need pay only the fair market value of the easement, not the much higher price it asserts AOG was willing to pay to prevent activation of Line BT-14 and the potential loss of revenue associated with AOG's service to MacSteel. Failing to reach an agreement on the fair market value of the easement with the City of Barling, CenterPoint states that it has initiated an eminent domain proceeding to obtain the easement in the United States District Court for the Western District of Arkansas.¹²

Bypass

22. AOG contends that approval of CenterPoint's request would result in wasteful duplication of AOG's existing facilities and frustrate the Arkansas PSC's attempt to

¹² On May 12, 2004, the District Court denied a motion for immediate possession of the easement, pending resolution by this Commission of issues in this proceeding regarding activation of Line BT-14 and the installation of the delivery tap.

balance residential and industrial customers' interests through state rates. AOG argues that CenterPoint's facilities are not needed because AOG already provides service to MacSteel and has offered to negotiate a lower rate for that service. AOG states that the loss of MacSteel, its largest customer, would shift the burden of its costs to its other customers, contrary to Arkansas' *de facto* state policy of partially subsidizing residential customers. The Arkansas PSC, it asserts, has a greater incentive, and is in a better position, than this Commission to strike a reasonable balance between the competing concerns of local residential and industrial customers in this case.

23. AOG also fears that CenterPoint will attempt to attract additional AOG customers once it activates the involved segment of Line BT-14, and it asserts that CenterPoint has not provided sufficient information for a full evaluation of rate impacts on AOG customers. AOG contends that CenterPoint has not sufficiently identified and supported its projected costs for the project or the rates it will charge to recover these costs, so that there is material doubt concerning the economic feasibility of the proposed service without anti-competitive and unduly discriminatory cross-subsidies.

CenterPoint's Answer

24. CenterPoint states that its proposal is no different from numerous similar proposals approved by the Commission, and is fully in accord with the Commission's policy encouraging competition. CenterPoint avers that its cost estimate contains all potentially significant costs associated with the construction and operation of the proposed delivery point facilities, and it states it will charge MacSteel only its Rate Schedule FT rates, and will not seek an additional incremental rate.

Discussion

25. Because the facilities proposed to be constructed and operated will be used to transport natural gas in interstate commerce subject to the jurisdiction of this Commission, their construction and operation are subject to the requirements of section 7 of the NGA.

26. Although CenterPoint's application was filed under the prior notice procedures, the 30-day reconciliation period for resolution of the protest under section 157.205(g) of the Commission's regulations has expired and the protest has not been withdrawn. Thus, in accordance with section 157.205(g) of the regulations, CenterPoint's prior notice request has been processed as though it were an application for case-specific section 7(c) authorization.

Line BT-14**CenterPoint's Certificate**

27. Initially, we will address the issues raised by AOG regarding CenterPoint's activation of the 11-mile segment of Line BT-14 necessary to provide service to the MacSteel delivery point that is the subject of CenterPoint's prior notice request. AOG argues that CenterPoint has no authority to operate the segment because it did not institute service through the line segment within 12 months of its acquisition, or alternatively, because it has abandoned the line segment by not using it. We disagree with both premises, and we find that CenterPoint holds a valid certificate to operate the 11-mile line segment of Line BT-14.

28. CenterPoint acquired the 129-mile Line BT-14 in 1988 and has provided service through over 100 miles of the pipeline since that time. The order issuing CenterPoint its certificate contained a standard Commission requirement that service on the line begin within 12 months of the date of the order approving the acquisition of the line and issuing the certificate. We find that CenterPoint satisfied this condition by instituting service on Line BT-14. We likewise find that CenterPoint has not abandoned this line segment. CenterPoint has not provided service through the 11-mile segment on the western end of the line for one simple reason – it has had no customers. Having no customers, CenterPoint preserved the line segment by filling it with nitrogen so it would be ready for service if a customer should develop. It has never refused a request for service on the segment. A customer has now developed, and CenterPoint plans to activate the line segment so that it may provide service to the customer's plant facilities. CenterPoint's certificate authority to operate the 11-mile segment remains in effect and CenterPoint does not need Commission approval to provide service.

The City of Barling Easement

29. AOG states that when the terms of the original 50-year easement agreement expired earlier this year, AOG acquired the rights to the easement when the City of Barling offered those rights in a competitive bidding process. AOG asserts that CenterPoint no longer holds the easement, and believes that it has effectively blocked CenterPoint from operating that portion of Line BT-14. AOG may indeed hold an

easement across the property owned by the City of Barling, but neither AOG nor the City of Barling may block CenterPoint's operation of its pipeline.¹³

30. When the Commission issues a certificate under section 7 of the NGA to operate a pipeline for the transportation of natural gas, that certificate includes the right to acquire an easement for the pipeline. If the pipeline cannot reach an agreement with the landowner on price through negotiation, the pipeline, under section 7(h) of the NGA may acquire the necessary easement by the exercise of eminent domain. The compensation paid in an eminent domain proceeding is a matter of state law, *i.e.*, either the federal or state court in which the proceeding takes place will apply state standards regarding the amount of compensation.¹⁴

31. CenterPoint holds a section 7 certificate to operate a natural gas pipeline through the City of Barling. With the certificate comes the right to obtain, through eminent domain, if necessary, the necessary easements for the pipeline. The City of Barling's granting of an easement to a third party has no effect on CenterPoint's rights under section 7(h) of the NGA.

Environment and Safety

32. Line BT-14 was constructed approximately 50 years ago. Activation of service through the line will not result in any ground disturbance, except with respect to activities related to construction of the proposed delivery point. Thus, there are no environmental issues associated with activating Line BT-14 that require review under the National Environmental Policy Act of 1969 (NEPA). Contrary to AOG's contention, activation of Line BT-14 is not part of the proposed delivery point project.

33. DOT has exclusive authority to regulate the safety of interstate gas pipelines. The DOT Research and Special Programs Administration's (RSPA's) Office of Pipeline Safety administers the national regulatory program to ensure the safe transportation of natural gas by pipeline. RSPA has promulgated extensive regulations in 49 C.F.R. Part 192 that cover specifications for a broad array of pipeline construction and operation,

¹³ See *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988).

¹⁴ 15 U.S.C. § 717(h).

including materials, pipe and pipeline components, design, welding and other joining techniques, general construction requirements, corrosion control, testing, operations, and maintenance. Part 192 also defines area classifications based on population density in the vicinity of the pipeline and specifies more rigorous safety requirements for populated areas.¹⁵ AOG expresses particular concern that several structures are located in close proximity to the line. CenterPoint, however, explains that all these structures were in existence at the time the Commission certificated the line. CenterPoint has certified that it has maintained the line in accordance with DOT requirements, and that it will continue to comply in the future with all applicable DOT safety regulations, including DOT's new rules relating to high consequence areas. While AOG has filed no evidence to suggest that this is not the case, if AOG believes that CenterPoint is violating those regulations, it may file a complaint with that agency.

Bypass

34. The Commission's court-approved policy is to allow the bypass of LDCs by interstate pipelines where there is no indication that the proposed service is the result of anti-competitive or unduly discriminatory behavior.¹⁶ This policy is based on our belief that on a national level natural gas consumers are better served by a competitive natural gas market that encourages improved service at lower rates. The Commission strives to honor end-users' decisions as to whether it is economical to undertake direct service from interstate pipelines. This allows all participants in the natural gas market greater access to the market. The Commission has explained that it is not willing to shield LDCs from the effects of competitive forces because it believes that all consumers will ultimately benefit from the Commission's pro-competitive policies. The Commission has stated that "our ultimate task in authorizing construction or transportation with bypass implications is to assure that the competitive process operates fairly."¹⁷

35. Here, CenterPoint is responding to MacSteel's request for service in a competitive environment. CenterPoint's proposal for construction and operation of the delivery point

¹⁵ See Independence Pipeline Company, 91 FERC ¶ 61,102 (2000).

¹⁶ See Algonquin Gas Transmission Company, 95 FERC ¶ 61,138 (2001).

¹⁷ See Questar Southern Trails Pipeline Company, 89 FERC ¶ 61,050 (1999).

facilities is responsive to MacSteel's request for natural gas service. The proposal will provide a direct connection to interstate natural gas supplies for the MacSteel plant in a manner consistent with the Commission's policy objectives. There is no evidence that CenterPoint's proposal is the result of anti-competitive or unduly discriminatory behavior.

36. AOG argues that the new CenterPoint delivery facilities would be a wasteful duplication of its own facilities. In nearly identical circumstances, however, the Commission has found that, while the new facilities may duplicate existing facilities, the construction of bypass facilities is not wasteful because such construction generally results in an end user's obtaining an additional service option.¹⁸ The construction of CenterPoint's delivery facilities is not wasteful because MacSteel has concluded that they will be to its economic benefit. Moreover, very few additional facilities are necessary to accomplish service to MacSteel.

37. The Commission has addressed and rejected AOG's cost-shifting argument in other cases.¹⁹ The Commission recognizes that CenterPoint's proposed delivery facilities may successfully compete with AOG for service to MacSteel. However, the Commission has held that "in a competitive environment there simply is no guarantee that any customer will always remain a customer."²⁰ The Commission has also explained that cost-shifting at the LDC level is not within the Commission's jurisdiction.²¹ The ultimate rate implications for AOG's services are state matters to be determined by the Arkansas PSC.²² The Commission has found that one factor underlying our policy that affords industrial customers the opportunity to seek out the

¹⁸ Algonquin, 95 FERC ¶ 61,138 (2001).

¹⁹ *Id.* See Texas Gas Transmission Corporation, 68 FERC ¶ 61,301 (1994).

²⁰ See, e.g., Texas Gas Transmission Corporation, 65 FERC ¶ 61,275 (1993).

²¹ See Northern Natural Gas Company, 74 ¶ 61,172 (1996).

²² The Arkansas PSC filed a notice of intervention in this proceeding, but did not state any view regarding the proposed project or provide any evidence regarding its rate structure or policies.

most efficient means of meeting energy needs is the availability of state public service commission action to assure that any cost-shifting effects that actually do occur at the state level are allocated and administered reasonably and in accord with applicable state goals and policies.²³

38. CenterPoint's cost estimate is within the current project cost limitation of \$21,600,000 for prior notice filings contained in section 157.208(d) of the Commission's regulations. Because projects that meet the blanket certificate cost limitations are considered to have a sufficiently small impact on ratepayers, CenterPoint's proposal to provide the new service under its current rate schedule on file with the Commission is appropriate. CenterPoint's jurisdictional rates are not changed by our approval of this project, and thus there are no rate implications (cost-shifting) associated with CenterPoint's jurisdictional customers. If AOG, in the future, believes that CenterPoint is engaged in undue discrimination and/or anti-competitive behavior, it may file a complaint under section 5 of the NGA.

39. CenterPoint's prior-notice delivery point request was filed under the provisions of section 157.211, not section 157.208, as asserted by AOG. Therefore, the appropriate environmental conditions are those found in section 157.206(b). CenterPoint's proposal meets the environmental qualifications of section 157.206(b) and qualifies as a categorical exclusion under section 380.4(a)(21) of the Commission regulations. Therefore, we conclude that if the project is constructed and operated in accordance with CenterPoint's application filed on April 7, 2004, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

40. We find that construction and operation of the proposed delivery facilities is required by the public convenience and necessity. As noted, because of the protest to CenterPoint's prior notice filing, the Commission has treated the filing as an application for case-specific section 7(c) authorization. However, it is the Commission's policy not to grant section 7(c) case-specific authority to construct and operate facilities when the applicant can do so under its blanket certificate.²⁴

²³ See *Transcontinental Gas Pipe Line Corporation*, 87 FERC ¶ 61,136 (1999).

²⁴ See *Destin Pipeline Company, L.L.C.*, 83 FERC ¶ 61,308 (1998).

41. At a hearing held on July 28, 2004 the Commission on its own motion received and made part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission orders:

(A) CenterPoint is authorized to construct and operate the proposed facilities under its Part 157 blanket certificate, as more fully set forth in the application, as supplemented, and in this order.

(B) The request by AOG for summary rejection of the application is denied.

(C) The protests and requests for evidentiary hearing by AOG and the City of Barling, Arkansas are denied.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.