

119 FERC ¶ 61,304
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 157

(Docket No. RM07-17-000)

Revisions to Landowner Notification and Blanket Certificate Regulations

(June 22, 2007)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: On October 19, 2006, the Federal Energy Regulatory Commission (Commission) issued a Final Rule amending its regulations to expand the scope and scale of activities that may be undertaken pursuant to blanket certificate authority and clarifying that existing Commission policies permit natural gas companies to charge different rates to different classes of customers.¹ The Commission proposes to further amend its regulations to modify the landowner notification requirements and require a noise survey following the completion of projects involving compressor facilities undertaken pursuant to blanket certificate authority. The proposed regulatory revisions should enhance public participation in the Commission's consideration of proposed

¹ Order No. 686, 71 FR 63680 (October 31, 2006), FERC Stats & Regs ¶ 31,231 (2006); Notice of Proposed Rulemaking (NOPR) 71 FR 36276 (June 26, 2006), FERC Stats. & Regs. ¶ 32,606 (2006). An order on rehearing and clarification of the Final Rule in Docket No. RM06-7-001 is issued contemporaneously with this NOPR. 119 FERC ¶ 61,303 (2007).

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projects and ensure that compressor projects completed under blanket certificate authority will not have a significant adverse environmental impact.

DATES: Comments are due [insert date 30 days after publication in the **FEDERAL REGISTER**]

ADDRESSES: You may submit comments, identified by Docket No. RM07-17-000, by one of the following methods:

Agency Web site: <http://ferc.gov>. Follow the instructions for submitting comments via the eFiling link found in the Comment Procedures section of the Preamble.

Mail: Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, N.E., Washington, DC 20426.

Refer to the Comment Procedures section of the preamble for additional information on how to file paper comments.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Revisions to Landowner Notification
and Blanket Certificate Regulations

Docket No. RM07-17-000

NOTICE OF PROPOSED RULEMAKING

(June 22, 2007)

I. Introduction

1. On October 19, 2006, the Federal Energy Regulatory Commission (Commission) issued a Final Rule amending its Part 157, Subpart F, regulations to expand the scope and scale of activities that may be undertaken pursuant to blanket certificate authority and clarifying that existing Commission policies permit natural gas companies to charge different rates to different classes of customers.² The Commission proposes to further amend its Part 157 regulations to modify the landowner notification requirements and require a noise survey following the completion of projects involving compressor facilities undertaken pursuant to blanket certificate authority. The proposed regulatory revisions are expected to enhance public participation in the Commission's consideration of proposed projects and ensure that compressor projects completed under blanket certificate authority will not have a significant adverse environmental impact.

² Order No. 686, 71 FR 63680 (October 31, 2006), FERC Stats & Regs ¶ 31,231 (2006); Notice of Proposed Rulemaking (NOPR) 71 FR 36276 (June 26, 2006), FERC Stats. & Regs. ¶ 32,606 (2006). An order on rehearing and clarification of the Final Rule in Docket No. RM06-7-000 is issued contemporaneously with this NOPR. 119 FERC ¶ 61,303 (2007)

II. Background

2. The blanket certificate program relies on the presumption that any project permitted under blanket certificate authority will not have a significant adverse environmental impact. The Commission ensures that this is the case by restricting blanket certificate authority to certain types of facilities and to individual projects that can comply with a cost cap and the environmental requirements specified in § 157.206(b). Prior to the Final Rule's increase in the per project cost cap³ and the expansion of blanket certificate authority to cover compressor facilities that alter mainline capacity, blanket certificate authority was restricted to a limited set of compression facilities, e.g., compressors on lateral pipelines, compressors installed temporarily, replacement compressors that could not qualify under § 2.55(b), and compressors needed to restore service lost due to sudden unforeseen damage to a mainline.

3. A compressor project under the blanket certificate program is not subject to the same scrutiny and procedural safeguards that apply to a compressor project subject to case-specific NGA section 7 certificate authority. This is most pronounced with respect to a project that qualifies for automatic authorization under the blanket certificate regulations, in which case the Commission may remain unaware of the project's construction until a company submits an annual report of projects completed under

³ The Final Rule increased the blanket certificate project cost limits from \$8,200,000 to \$9,600,000 for automatic authorization projects and from \$22,700,000 to \$27,400,000 for prior notice projects.

automatic blanket certificate authority pursuant to § 157.207. Thus, in contrast to a proposal for case-specific certificate authority, for a project subject to blanket certificate authority, the Commission and public are not assured the same opportunity to assess aspects of the project such as what constitutes a noise sensitive area (NSA),⁴ the prospective uses of property proximate to a compressor facility, habitat impacts on non-residential areas, whether a particular area has a heightened noise sensitivity that would merit a limit of less than 55 decibels (dBA), or the cumulative impacts resulting from modifying or expanding existing compressor facilities.

4. As a result, whereas an individual assessment can be undertaken for each proposed case-specific compressor project in order to establish a noise level appropriate to the particular site, this is not the case for blanket certificate compressor projects. The more cursory standard of review necessary to expedite projects under the blanket certificate program, in conjunction with the expansion of the blanket certificate program, prompted the Commission to impose a stricter standard on the noise produced by blanket certificate compressor facilities. As proposed in the NOPR and implemented in the Final Rule,⁵ the Commission stated that going forward, all compressor facilities constructed pursuant to blanket certificate authority must meet the standard day-night level (L_{dn}) limit of 55 dBA at the boundary of the compressor site. However, as discussed in the order on rehearing

⁴ In the case of a blanket certificate compressor project, the blanket certificate holder, rather than the Commission, determines what constitutes a potentially affected NSA.

⁵ The revised blanket certificate regulations became effective on January 2, 2007.

of the Final Rule issued contemporaneously with this NOPR,⁶ the Commission is returning to the noise limit in place prior to the Final Rule, which requires that compressor facilities installed under blanket certificate authority be no louder than an L_{dn} of 55 dBA at any existing pre-existing NSA.

III. Proposed Regulatory Revisions

A. Landowner Notification

5. Currently, a natural gas company that seeks to undertake a compressor project must notify all landowners with a residence within one-half mile of proposed compressors or their enclosures.⁷ The Commission is concerned that this existing landowner notification requirement fails to capture all potentially affected landowners, because a compressor project could go forward without any notification to nearby landowners without a residence on their property. To guarantee that land use issues – including existing non-residential uses as well as future uses of undeveloped land – are adequately considered, the Commission proposes to revise § 157.6(d)(2)(iii), which defines “affected landowners” as: owners of property interests, as noted in the most recent county/city tax records as receiving the tax notice, whose property, “[c]ontains a residence within one-half mile of proposed compressors or their enclosures.” The Commission proposes to omit the qualification that the property contain a residence to ensure that all landowners within one-half mile of a compressor site receive notice prior

⁶ See note 1.

⁷ See the landowner notification requirements, 18 CFR §§ 157.203(d)(1) and (2), and the definition of affected landowners, 18 CFR § 157.6(d)(2)(iii).

to construction, regardless of whether there is a residence on their property, and regardless of whether construction is undertaken pursuant to blanket or case-specific certificate authorization.⁸

B. Noise Survey

6. To verify compliance with the compressor noise limit, the Commission proposes to add a new § 157.206(b)(5)(ii) that will require a company installing compressor facilities under blanket certificate authority to submit a noise survey within 60 days of placing new facilities in service to demonstrate that noise attributable to the operation of the company's new compressor facilities does not exceed an L_{dn} of 55 dBA at any preexisting NSA.⁹ A noise survey measures the noise at selected locations to quantify the existing noise environment by using a sound level meter, a dosimeter, or an integrating sound level meter over a specified timeframe.

7. The Commission concludes the above-described procedural modifications are necessary and sufficient to retain the expedited authorization available for blanket certificate projects while guaranteeing that compressor activities subject to the expanded

⁸ This proposed revision of the 18 CFR 157.6(d)(2)(iii) notification condition will also apply to landowners within one-half mile of liquefied natural gas (LNG) facilities.

⁹ The existing 18 CFR 157.206(b)(5)(ii) describing noise attributable to drilling activities will remain unchanged, but will be redesignated as 18 CFR 157.206(b)(5)(iii).

blanket certificate program will not have significant adverse environmental impacts.¹⁰

The Commission invites comments on these proposed regulatory revisions.

IV. Information Collection Statement

8. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting, record keeping, and public disclosure requirements (collections of information) imposed by an agency.¹¹ Therefore, the Commission is providing notice of its proposed information collections to OMB for review in accordance with section 3507(d) of the Paperwork Reduction Act of 1995.¹² Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. The only entities affected by this rule would be the natural gas companies under the Commission's jurisdiction.

9. FERC-537, "Gas Pipeline Certificates: Construction, Acquisition and Abandonment," identifies the Commission's information collections relating to Part 157 of its regulations, which apply to natural gas facilities for which authorization under NGA section 7 is required, and includes all blanket certificate projects.

¹⁰ Currently, companies must conduct and submit a noise survey for compressor projects completed under case-specific certificate authority. The proposed new 18 CFR 157.206(b)(5)(ii) would extend this same requirement to compressor projects completed under blanket certificate authority. Note that in the order on rehearing in Docket No. RM06-7-001 the Commission similarly seeks to harmonize requirements that apply to case-specific and blanket certificate compressor projects. See note 1.

¹¹ 5 CFR 1320.11.

¹² 44 U.S.C. 3507(d).

10. The proposed revisions to the Commission's regulations, as contained in the NOPR, and the resulting change in collections of information burdens, are as follows.

Natural gas companies seeking to construct, add to, or modify compressor or LNG facilities must provide notice to all landowners within one-half mile of the boundary of the project site. Currently, gas companies undertaking such activities are required to provide notice to landowners within one-half mile of the boundary of the project site only if there is a residence on their property.

11. This proposed revision should have little impact on companies' notice procedures. Currently, companies are compelled to identify all landowners of record within one-half mile of the project site, and then notify the subset of landowners with a residence on their property. In addition, as applicable, a company is also required to provide the names and addresses of affected landowners to the Commission as part of Resource Report 1 – General Project Description.¹³ Extending the notice requirement to all landowners should require a nominal additional effort. In fact, it may be the case that distinguishing properties with residences from those without is more burdensome than simply notifying all identified landowners. In view of this, the Commission expects the time and cost to notify non-residential landowners will prove to be de minimis.

12. The Noise Control Act of 1972 established the requirement that all federal agencies administer their programs to promote an environment free of noise that

¹³ See 18 CFR 380, Appendix A.

jeopardizes public health and welfare.¹⁴ In 1974, the U.S. Environmental Protection Agency, acting to execute its responsibility to coordinate federal research and activities related to noise control, identified an L_{dn} of 55 dBA as necessary to protect against speech interference and sleep disturbance for residential, educational, and healthcare NSAs.

13. The Commission proposes that a company installing compressor facilities under blanket certificate authority submit a noise survey within 60 days of placing new facilities in service to demonstrate that the noise attributable to the operation of the company's compressors does not exceed an L_{dn} of 55 dBA at pre-existing NSAs. The Commission does not view this proposal as substantially modifying natural gas companies' existing obligations, since the proposed submission of a noise survey simply provides verification of compliance with the existing noise requirement. This proposed noise survey requirement already applies to compressor projects subject to case-specific NGA section 7 certificate authority.¹⁵

14. The Commission estimates it will require 32 hours to complete a noise survey, and expects the aggregate impact of the proposal to be modest, given that in 2006, two

¹⁴ 42 U.S.C. 4901, et seq.

¹⁵ The potential cost savings to the industry that may be realized by enabling projects previously permitted only under case-specific authority to proceed under the expanded blanket certificate program were discussed in the Final Rule. With respect to the proposed noise survey, the Commission notes that case-specific projects require a noise survey both before and after construction. Thus, to some extent, the relatively minor cost of conducting a post-construction noise survey for a blanket certificate project will be offset by the benefit of not having to also conduct a noise survey before construction, as would be necessary for a case-specific certificate project.

blanket certificate compressor projects were completed. For the purpose of estimating burden hours, the Commission anticipates five such projects in the future.

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

Information Collection Costs: The above reflects the total reporting burden associated with the proposed broadening of the landowner notification requirement. Because of the regional differences and the various staffing levels that will be involved in preparing the documentation (legal, technical, and support) the Commission is using an hourly rate of \$150 to estimate the costs for filing and other administrative processes (reviewing instructions, searching data sources, completing and transmitting the collection of information). The estimated cost is anticipated to be \$3,360 per project, for a total of \$24,000.

Title: FERC-537.

Action: Proposed Data Collection.

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

Respondents: Natural gas pipeline companies.

Frequency of Responses: On occasion.

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

15. The Commission requests comments on the accuracy of the burden estimates, how the quality, quantity, and clarity of the information to be collected might be enhanced, and any suggested methods for minimizing the respondent's burden. Interested persons may obtain information on the reporting requirements or submit comments by contacting the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 (Attention: Michael Miller, Office of the Executive Director, 202-502-8415 or e-mail michael.miller@ferc.gov). Comments may also be sent to the Office of Management and Budget (Attention: Desk Officer for the Federal Energy Regulatory Commission, fax: 202-395-7285 or e-mail: oir_submission@omb.eop.gov).

V. Environmental Analysis

16. The Commission is required to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) for any action that may have a significant adverse effect on the human environment.¹⁶ In promulgating the blanket certificate program in 1982, the Commission prepared an EA in which it determined that, subject to compliance with the standard environmental conditions, projects under the blanket program would not have a significant environmental impact. As a result, the Commission determined that automatic authorization projects would be categorically excluded from the need for an EA or EIS under § 380.4 of the Commission's regulations. However, the Commission specified that prior notice projects should be subject to an environmental review to ensure

¹⁶ Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986-1990 ¶ 30,783 (1987).

each individual project would be environmentally benign, a requirement applicable to compression projects that would expand mainline capacity newly permitted under blanket certificate authority as a result of the Final Rule.

17. As discussed herein, the Commission is proposing to expand landowner notification and require the submission of a post-project noise survey for blanket certificate activities involving compressor facilities. Therefore, this proposed rule does not constitute a major federal action that may have a significant adverse effect on the human environment.

VI. Regulatory Flexibility Act Analysis

18. The Regulatory Flexibility Act of 1980 (RFA)¹⁷ generally requires a description and analysis of proposed regulations that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such an analysis if proposed regulations would not have such an effect.¹⁸ Under the industry standards used for purposes of the RFA, a natural gas pipeline company qualifies as "a small entity" if it has annual revenues of \$6.5 million or less. Most companies regulated by the Commission do not fall within the RFA's definition of a small entity.¹⁹

¹⁷ 5 U.S.C. 601-612.

¹⁸ 5 U.S.C. 605(b) (2000).

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

19. The procedural modifications proposed herein should have no significant economic impact on those entities – be they large or small – subject to the Commission’s regulatory jurisdiction under NGA section 3 or 7, and no significant economic impact on state agencies. Accordingly, the Commission certifies that these proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities.

VII. Public Comments

20. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due by [insert date 30 days from publication in the **FEDERAL REGISTER**]. Comments must refer to Docket No. RM07-17-000, and must include the commenter’s name and address, and if applicable, the organization represented. Comments may be filed either in electronic or paper format. The Commission encourages electronic filing.

21. Comments may be filed electronically via the eFiling link on the Commission's web site at <http://www.ferc.gov>. The Commission accepts most standard word processing formats and requests commenters to submit comments in a text-searchable format rather than a scanned image format. Commenters filing electronically do not need to make a paper filing. Commenters unable to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, N.E., Washington, DC, 20426.

22. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VIII. Document Availability

23. In addition to publishing the full text of this document in the Federal Register, the Commission provides all interested persons an opportunity to view and print the contents of this document via the Internet through FERC's website (<http://www.ferc.gov>) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, N.E., Room 2A, Washington D.C. 20426. User assistance is available for FERC's website during normal business hours from FERC's Online Support at 202-502-6652, toll free at 1-866-208-3676, or by e-mail at ferconlinesupport@ferc.gov, and from the Public Reference Room at 202-502-8371, TTY at 202-502-8659, or by e-mail at public.referenceroom@ferc.gov.

List of subjects in 18 CFR Part 157

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

By direction of the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

In consideration of the foregoing, the Commission proposes to amend part 157, Chapter I, Title 18, Code of Federal Regulations, as follows:

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

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

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

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

§ 157.6 Applications; general requirements.

* * * * *

(d) * * *

(2) * * *

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

* * * * *

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

§ 157.206 Standard conditions.

* * * * *

(b) * * *

(5) * * *

(ii) For each new compressor station, compressor addition, or modification to an existing compressor, the blanket certificate holder must file a noise survey with the Secretary no later than 60 days after the activity is complete and the compressor facility is placed in service. If the noise attributable to the operation of the facility at full load exceeds an L_{dn} of 55 dBA at any nearby noise-sensitive areas, the blanket certificate holder shall file a report on what changes are needed and must put in place additional noise controls to meet the 55 dBA level within 1 year of the in-service date. The blanket certificate holder must confirm compliance with this requirement by filing a subsequent noise survey with the Secretary no later than 60 days after installation of the additional noise controls.

* * * * *