

145 FERC ¶ 61,154
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Parts 2, 157, and 380

[Docket Nos. RM12-11-000 and RM12-11-001; Order No. 790]

Revisions to Auxiliary Installations, Replacement Facilities,
and Siting and Maintenance Regulations

(Issued November 22, 2013)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing this Final Rule to amend its regulations to (1) clarify that auxiliary installations added to existing or proposed interstate transmission facilities under section 2.55(a) of the Commission's regulations must be located within the authorized right-of-way or facility site for the existing or proposed facilities and use only the same temporary work space that was or will be used to construct the existing or proposed facilities; and (2) codify the common industry practice of notifying landowners prior to coming onto their property to install auxiliary or replacement facilities under section 2.55; certain replacements under Part 157, Subpart F; or conduct maintenance activities under section 380.15.

EFFECTIVE DATE: This rule will become effective **[insert date 60 days after publication in the FEDERAL REGISTER]**.

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SUPPLEMENTARY INFORMATION:

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Revisions to Auxiliary Installations, Replacement Docket Nos. RM12-11-000
Facilities, and Siting and Maintenance Regulations RM12-11-001

ORDER NO. 790

FINAL RULE

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony Clark.

Revisions to Auxiliary Installations, Replacement Docket Nos. RM11-12-000
Facilities, and Siting and Maintenance Regulations RM11-12-001

ORDER NO. 790

FINAL RULE

(Issued November 22, 2013)

1. The Federal Energy Regulatory Commission (Commission) is issuing this Final Rule to amend its regulations to (1) clarify that auxiliary installations added to existing or proposed interstate transmission facilities under section 2.55 of the regulations¹ must be located within the authorized right-of-way or facility site for the existing or proposed facilities and use only the same temporary work space that was or will be used to construct the existing or proposed facilities; and (2) codify the common industry practice of notifying landowners prior to coming onto their property to install auxiliary or replacement facilities under section 2.55; certain replacements under Part 157, Subpart F; or conduct maintenance activities under section 380.15.

¹ 18 CFR 2.55 (2013).

I. Background

2. Section 7(c)(1)(A) of the Natural Gas Act (NGA) requires a natural gas company to have certificate authorization for the “construction or extension of any facilities.”² To “avoid the filing and consideration of unnecessary applications for certificates,”³ i.e., to save the time and expense that would otherwise be expended by companies and the Commission in undertaking a full, formal NGA section 7 certificate proceeding for every modification to an authorized system, the Commission added section 2.55 to its regulations.⁴ Section 2.55 establishes that for the purposes of section 7(c), “the word

² 15 U.S.C. 717f(c)(1)(A) (2012).

³ *Filing of Applications for Certificates of Public Convenience and Necessity, Notice of Proposed Rulemaking*, NOPR, 13 FR 6253, at 6254 (October 23, 1948).

⁴ Section 2.55 went into effect in 1949. The Commission subsequently considered expanding section 2.55, but stated that although it “recognizes the desirability of dealing with minor installations on a practical basis,” it would not rely on section 2.55 because of “doubts that the Natural Gas Act authorizes it to further expand its rule excluding certain facilities from the certification requirements” ; instead the Commission “recommended to the Congress that it be given such authority” to “permit[] greater flexibility in its procedures with respect to rate filings and certification of natural-gas facilities.” *Amending the Commission’s General Rules and Regulations*, Order No. 185, 15 FPC 793, at p. 794 (1956). Such authority was not forthcoming. In an effort to forego issuing an individual certificate authorization in advance of every single jurisdictional action, the Commission provided for companies to file a single certificate application under section 157.6 that “covered in general outline along the lines of a budget estimate the proposed routine construction intended to be undertaken by it during the current or ensuing fiscal year,” describing the facilities, costs, capacity, purpose, construction schedule, customers affected, effects on gas supply, rates, service, etc. *Id.* The Commission added section 2.58 to its regulations for these “budget-type” certificate applications, see *Gas Purchase Facilities – Budget-Type Certificate Applications*, Order No. 247, 27 FPC 1119 (1962). These regulations were removed in 1982 when the blanket certificate program was instituted, which offered companies a streamlined means

(continued...)

facilities as used therein shall be interpreted to exclude” auxiliary and replacement facilities.⁵ Thus, while an auxiliary or replacement facility that qualifies for purposes of section 2.55 remains subject to the Commission’s NGA jurisdiction, it does not require an individual, facility-specific section 7(c) certificate authorization.

3. Facilities that qualify under section 2.55(a) must be “merely auxiliary or appurtenant to an authorized or proposed pipeline transmission system” and installed “only for the purpose of obtaining more efficient or more economical operation of the authorized or proposed transmission facilities,” such as “[v]alves; drips; pig launchers/receivers; yard and station piping; cathodic protection equipment; gas cleaning, cooling and dehydration equipment; residual refining equipment; water pumping,

to obtain certificate authorization for a limited set of routine and well understood facilities. *Interstate Pipeline Certificates for Routine Transactions*, Order No. 234, 47 FR 24254 (June 4, 1982), FERC Stats. & Regs., Regulations Preambles 1982-1985 ¶ 30,368 (1982), *order on reh’g*, Order No. 234-A, 47 FR 38871 (September 3, 1982), FERC Stats. & Regs., Regulations Preambles 1982-1985 ¶ 30,389 (1982), *amended by, Sales and Transportation by Interstate Pipelines and Distributors; Expansion of Categories of Activities Authorized Under Blanket Certificate*, Order No. 319, 48 FR 34875 (August 1, 1983), FERC Stats. & Regs., Regulations Preambles 1982-1985 ¶ 30,479 (1983). The scope of the blanket-eligible facilities has been expanded several times since 1982. *See, e.g., Revisions to the Blanket Certificate Regulations and Clarification Regarding Rates*, Order No. 686, 71 FR 63680 (October 31, 2006), FERC Stats. & Regs. ¶ 31,231 (2006), *order on reh’g and clarification*, Order No. 686-A, 72 FR 37431 (July 10, 2007), FERC Stats. & Regs. ¶ 31,249 (2007), *order on reh’g*, Order No. 686-B, 72 FR 54818 (September 27, 2007), FERC Stats. & Regs. ¶ 31,255 (2007).

⁵ 18 CFR 2.55 (2013).

treatment and cooling equipment; electrical and communication equipment; and buildings.”⁶

4. Originally, natural gas companies were not required to notify the Commission in advance of construction under section 2.55(a). However, in 1999 the Commission determined that when companies plan to add auxiliary facilities to a project that has already been authorized, but not yet completed, or to a project for which authorization is still pending, prior notification to the Commission is needed in order to afford the

⁶ *Id.* 2.55(a)(1). But for the inclusion of pig launchers/receivers in 1999, this list has remained unaltered since section 2.55 was put in place in 1949. Note that if a pipeline company wants to install any facilities specifically named in section 2.55(a)(1), but will not be installing them only for the purpose of obtaining more efficient or more economical operation of existing or proposed interstate transmission facilities, then the company cannot rely on section 2.55(a). *See, e.g., Algonquin Gas Transmission Company (Algonquin)*, 57 FERC ¶ 61,052 (1991), in which the Commission found a company’s reliance on section 2.55(a) to install an air stabilization unit was unwarranted because the unit was necessary for the company to meet the terms of its service agreements and comply with safety requirements, and thus was not only for the purpose of obtaining more efficient or more economical operation of its transmission facilities. *See also West Texas Gas, Inc.*, 62 FERC ¶ 61,039 (1993), in which the Commission found section 2.55(a) did not apply to facilities constructed to interconnect with another pipeline because the purpose of the interconnect was to enable the company to gain access to cheaper sources of gas, and thus was not only for the purpose of obtaining more efficient or more economical operation of its transmission facilities and *Natural Gas Pipeline Company of America*, 114 FERC ¶ 61,061, at n.4 (2006), in which the Commission rejected a company’s effort to employ section 2.55(a) to undertake well recompletions in a storage reservoir, “because the construction is designed to provide incremental storage capacity rather than to maintain the current level of service for existing customers,” and consequently required the company to obtain case-specific authorization for the recompletions (the company was permitted to rely on section 2.55(a) to make other modifications to its storage facility, including adding station piping, header and isolation valves with blowdowns, control valves, gas coolers, a transformer, field inlet separation facilities, and pigging equipment).

Commission the opportunity to assess the auxiliary facilities' environmental impacts, impacts which, when combined with the impacts of the construction and operation of the facilities that will be augmented by the auxiliary facilities, could potentially alter the Commission's conclusions regarding the overall environmental impact of the project.

5. As a result, Order No. 603⁷ revised section 2.55(a)(2) to require that if a company plans to rely on section 2.55 to construct auxiliary facilities in conjunction with: (1) a project for which case-specific certificate authority has already been received but which is not yet in service, (2) a proposed project for which a case-specific certificate application is pending, or (3) facilities that will be constructed subject to the prior notice provisions of the Part 157, Subpart F blanket certificate regulations, then the company must provide a description of the auxiliary facilities and their location to the Commission at least 30 days in advance of their installation.⁸ In the case of auxiliary facilities that will be constructed in conjunction with a project for which an application under Part 157, Subpart A for case-specific certificate authority is pending, the auxiliary facilities must be described in the application's environmental report, as required by section 380.12 of

⁷ *Revisions of Existing Regulations Under Part 157 and Related Sections of the Commission's Regulations Under Natural Gas Act*, Order No. 603, 64 FR 26572, at 26574 (May 14, 1999), FERC Stats. & Regs., Regulations Preambles July 1996 – December 2000 ¶ 31,073 (1999), *order on reh'g*, Order No. 603-A, 64 FR 54522 (October 7, 1999), FERC Stats. & Regs., Regulations Preambles July 1996 – December 2000 ¶ 31,081 (1999), *order on reh'g*, Order No. 603-B, 65 FR 11,462 (March 3, 2000), FERC Stats. & Regs., Regulations Preambles July 1996 – December 2000 ¶ 31,094 (2000).

⁸ See 18 CFR 2.55(a)(2)(ii) (2013).

the Commission's regulations, or in a supplemental filing while the application is pending.⁹ The Commission explained these advance notification requirements are necessary in order to afford the Commission time to include the environmental impacts of the auxiliary facilities as part of its environmental review of the project.¹⁰

6. Section 2.55(b) permits companies to replace facilities that are or will soon be physically deteriorated or obsolete, so long as doing so will not result in a reduction or abandonment of service and the replacement facilities will have a substantially equivalent

⁹ See 18 CFR 2.55(a)(2)(iii) (2013). In the case of auxiliary facilities to be constructed in conjunction with a proposed project for which an application for case-specific certificate authority is pending, section 2.55(a)(2)(iii) requires that the applicant describe the auxiliary facilities in the application's section 380.12 *Resource Report 1 – General Project Description*. Section 380.12(c)(1) requires the applicant to describe and provide location maps for “all jurisdictional facilities, including all aboveground facilities associated with the project (such as: meter stations, pig launchers/receivers, valves), to be constructed, modified, abandoned, replaced, or removed, including related construction and operational support activities and areas such as maintenance bases, staging areas, communications towers, power line, and new access roads (roads to be built or modified).” Section 380.12(c)(2) requires that the applicant's *Resource Report 1* identify and describe “all nonjurisdictional facilities, including auxiliary facilities, that will be built in association with the project, including facilities to be built by other companies.” If a company with a pending application for case-specific certificate authority determines that it will also need to construct auxiliary facilities, section 2.55(a)(2)(iii) requires that the applicant make a supplemental filing describing the auxiliary facilities while the application is pending.

¹⁰ *Revisions to Regulations Governing NGPA Section 311 Construction and the Replacement of Facilities*, Order No. 544, 57 FR 46,487 (October 9, 1992), FERC Stats. & Regs., Regulations Preambles January 1991 – June 1996 ¶ 30,951 (1992), *order on reh'g*, Order No. 544-A, 58 FR 57730 (October 27, 1993), FERC Stats. & Regs., Regulations Preambles January 1991 – June 1996 ¶ 30,983 (1993).

designed delivery capacity.¹¹ Section 2.55(b) replacement projects can go forward without case-specific or blanket certificate authorization. Further, the 30-day prior notice requirement in section 2.55(b)(2) for more expensive replacement projects only requires notice to the Commission, not landowners.¹²

7. In Order No. 603 the Commission specified that all replacement facilities must be constructed within the previously authorized right-of-way or facility site for the existing facilities and use the same temporary work spaces used for construction of the existing facilities.¹³ The Commission reasoned that section 2.55(b) replacements “should only involve basic maintenance or repair to relatively minor facilities,” where it has been determined that no significant impact to the environment would occur.¹⁴ The Commission suggested that in situations where a company wants to use land outside

¹¹ 18 CFR 2.55(b) (2013).

¹² The requirement that a company give at least 30 days prior notice to the Commission before commencing a replacement project applies if the project will exceed the current cost limit for projects automatically authorized under the Part 157 blanket certificate regulations. However, unlike the blanket certificate regulations, section 2.55 places no cost limits on auxiliary installations or replacement projects that qualify under that section.

¹³ Order No. 603, 64 FR 26572 at 26574-76, FERC Stats. & Regs. ¶ 31,073 and 18 CFR 2.55(b) (2013).

¹⁴ Order No. 603-A, 64 FR 54522 at 54524, FERC Stats. & Regs. ¶ 31,081.

previously authorized areas, it may be able to rely on its blanket certificate authority rather than 2.55(b) to undertake the project.¹⁵

A. Request for Clarification of Section 2.55(a) of the Commission's Regulations

8. On April 2, 2012, the Interstate Natural Gas Association of America (INGAA) requested clarification regarding the installation of auxiliary facilities under section 2.55(a) of the Commission's regulations.¹⁶ INGAA maintained that Commission staff had stated in discussions with pipeline representatives and in industry meetings that companies undertaking section 2.55(a) auxiliary installations to augment existing facilities that are already in service must stay within the right-of-way or facility site for the existing facilities and restrict construction activities to previously used work spaces. INGAA disagreed with these constraints, arguing that section 2.55(a) activities had not been limited in this way in the past, and that Commission staff's position amounted to rulemaking without the opportunity for notice and comment, contrary to the requirements of the Administrative Procedure Act (APA).¹⁷ Pursuant to section 385.207(a)(4) of the Commission's Rules of Practice and Procedure, INGAA requested that the Commission

¹⁵ Order No. 603, 64 FR 26572 at 26580, FERC Stats. & Regs. ¶ 31,073.

¹⁶ On May 2, 2012, MidAmerican Energy Pipeline Group (which includes Kern River Gas Transmission Company and Northern Natural Gas Company) filed a motion to intervene and comments in support of INGAA's petition.

¹⁷ 5 U.S.C. 553 (2012).

confirm INGAA's view that the right-of-way and work space constraints stated by staff do not apply to section 2.55(a) auxiliary installations.

B. Notice of Proposed Rulemaking (NOPR)

9. On December 20, 2012, the Commission issued a NOPR proposing to revise its regulations to clarify that, as with replacement projects under section 2.55(b), all auxiliary installation projects must take place within a company's authorized right-of-way or facility site and use only previously approved work spaces. In addition, the NOPR proposed to add a 10-day landowner notification requirement for section 2.55 auxiliary and replacement facilities and for section 380.15 maintenance activities.¹⁸

Timely comments on the NOPR were submitted by INGAA;¹⁹ Golden Triangle Storage, Inc. (Golden Triangle); MidAmerican Energy Pipeline Group (MidAmerican Energy);

¹⁸ *Revisions to Auxiliary Installations, Replacement Facilities, and Siting and Maintenance Regulations*, NOPR, 78 FR 679, 683 (January 4, 2013), FERC Stats. & Regs. ¶ 32,696 (2012) (cross-referenced at 141 FERC ¶ 61,228 (2012)). While section 380.15 covers siting, construction, and maintenance, our existing regulations already have notification requirements in place applicable to siting and construction; consequently, the additional prior notice requirement described in the new section 380.15(c) will apply exclusively to maintenance activities.

¹⁹ On January 22, 2013, INGAA made a filing styled as a request for rehearing of the NOPR, and on March 5, 2013, it filed comments on the NOPR. INGAA argues the NOPR functioned as a Final Rule by giving immediate effect to a change in the regulations without providing affected entities notice and an opportunity to comment. We do not believe the NOPR's clarification concerning section 2.55(a) effected any change; rather, it articulated existing, long-standing constraints and obligations with respect to auxiliary installations. Because the NOPR does not constitute an instant Final Rule, we find no cause to consider requests for rehearing of the NOPR. Nevertheless, we will accept INGAA's request for rehearing and treat it as comments in response to the NOPR. Thus, regardless of the distinction between INGAA's and the Commission's

(continued...)

Southern Star Central Gas Pipeline, Inc. (Southern Star); National Fuel Supply Corporation and Empire Pipeline, Inc. (National Fuel); and WBI Energy Transmission, Inc. (WBI Energy). Golden Triangle, MidAmerican Energy, Southern Star, and WBI Energy support INGAA's comments.

10. The commentors object to the Commission's position that auxiliary installations to enhance existing facilities must be located within the previously authorized areas for the existing facilities, arguing the Commission has not heretofore imposed such a limitation on the siting or construction of auxiliary facilities.

11. The commentors also oppose the NOPR's proposed new requirement that companies give prior notice to affected landowners before commencing construction of auxiliary or replacement facilities under section 2.55 of the regulations or maintenance activities under section 380.15 of the regulations. Although the commentors do not dispute the Commission's position in the NOPR that it is appropriate to give landowners prior notice to the extent practicable in order to minimize inconvenience to landowners, the commentors contend the proposed notice procedures described in the NOPR (1) are unnecessary, noting that some companies already comply with the spirit of this stipulation, and (2) are impractical, particularly with respect to urgent or unanticipated maintenance activities.

characterization of the NOPR, the concerns INGAA raises in both of its submissions will be addressed herein. We will identify INGAA's self-styled request for rehearing as January 2013 Comments and its subsequent submission as March 2013 Comments.

II. Discussion

A. Section 2.55(a) Auxiliary Facilities

12. In this Final Rule, the Commission revises its regulations, as proposed in the NOPR, to clarify that all section 2.55(a) auxiliary installations added to existing or proposed interstate transmission facilities must be located within the authorized right-of-way or facility site for the existing or proposed facilities and use only the same temporary work space that was or will be used to construct the existing or proposed facilities.

1. Commission Jurisdiction

13. INGAA argues that section 2.55(a) can be distinguished from section 2.55(b) on the grounds that auxiliary facilities are not needed to provide certificated services, and therefore are not jurisdictional, while replacement facilities are essential to provide certificated services, and therefore are jurisdictional. We disagree. Although section 2.55 states that “for purposes of section 7(c) of the Natural Gas Act, as amended, the word *facilities* as used therein shall be interpreted to exclude” auxiliary and replacement facilities,²⁰ the Commission’s choice of wording in drafting this section cannot change the fact that section 2.55(a) auxiliary facilities and section 2.55(b) replacement facilities nevertheless are jurisdictional facilities for purposes of section 7 of the NGA. It went without saying in 1949, and has largely gone without saying since, that all section 2.55 facilities are subject to the Commission’s jurisdiction. This is obvious with respect to

²⁰ Hence the title of section 2.55, *Definition of terms used in section 7(c)*, and the placement of section 2.55 in Part 2, *General Policy and Interpretations*.

replacements, since the new facilities step into the shoes of the aging facilities they replicate, and so assume the replaced facilities' jurisdictional status. Section 2.55(a) auxiliary installations are also jurisdictional, comprising that category of facilities that enable companies to operate existing or proposed jurisdictional facilities more efficiently or economically. All section 2.55 facilities are integrated into a larger interstate transmission system and serve no function other than to enable that system to perform its jurisdictional functions more efficiently or economically; just as the larger system is jurisdictional, the component parts of that system, including auxiliary facilities installed pursuant to section 2.55, are jurisdictional as well.²¹

14. INGAA states that the NGA mandates that any jurisdictional facility must be certificated. We concur. As we have stated: "Section 2.55 of the Commission's regulations serves, in effect, as standing authorization for pipelines to perform periodic maintenance and routine replacement" in order to "permit pipelines to undertake limited construction projects without waiting for NGA section 7(c) case specific certificate

²¹ If facilities are installed in reliance on section 2.55, but do not meet the criteria of this section, then they are jurisdictional facilities installed without the requisite Commission certificate authorization. For example, in *Algonquin*, after finding facilities installed under color of section 2.55(a) did not qualify under that section, we directed the company to show cause "why it did not violate and is not violating section 7(c) of the Natural Gas Act by constructing and operating [facilities] without obtaining a certificate from the Commission." 57 FERC ¶ 61,052, at 61,205-06. The company subsequently obtained case-specific certificate authorization for the facilities at issue in *Boston Gas Company*, 70 FERC ¶ 61,122, Ordering Paragraph (F) (1995).

authorization.”²² In other words, section 2.55 grants automatic certificate authorization for a limited class of facilities.

15. To qualify under section 2.55(a), facilities must serve “*only* for the purpose of obtaining more efficient operation or more economical operation of the authorized or proposed transmission facilities” (emphasis added).²³ Therefore, we have always assumed that section 2.55(a) would necessarily be confined to projects small enough and inconsequential enough that their environmental and economic impacts would not merit the close scrutiny provided by (and time and expense consumed by) case-specific NGA section 7 review.²⁴ Auxiliary facilities installed in reliance on section 2.55(a) will be added either to existing interstate transmission facilities that were subject to environmental review prior to construction or to a proposed project, in which case the

²² *Emergency Reconstruction of Interstate Natural Gas Facilities Under the Natural Gas Act*, Notice of Proposed Rulemaking, 68 FR 4120 (January 28, 2003), FERC Stats. & Regs. ¶ 32,567, at 34,679-80 (2003). In the interest of administrative and industrial efficiency, we have dismissed requests for case-specific section 7 certificate authorization for facilities that qualified for this “standing authorization” provided by section 2.55. For example, in *Columbia Gas Transmission Corporation*, 68 FERC ¶ 61,156, at 61,743 (1994), we dismissed a request for case-specific section 7 certificate authorization to install a pigging and a methanol injection system after finding that the proposed facilities would serve only for the purpose of obtaining more efficient or more economical operation of an authorized transmission system, and thus qualified as auxiliary facilities that could and should be installed under section 2.55(a).

²³ *Supra* n.6.

²⁴ The sentiment in Order No. 603-A, 64 FR 54522 at 54524, FERC Stats. & Regs. ¶ 31,081, that replacements “should only involve basic maintenance or repair to relatively minor facilities where the Commission has determined that no significant impact to the environment will occur” is applicable as well to auxiliary installations.

applicant must identify in its certificate application the auxiliary facilities it plans to install in conjunction with the project, so that the auxiliary facilities will be included in the review of the project's environmental impacts.²⁵ In the case of section 2.55(b) replacement facilities, an environmental review was performed prior to construction of the existing facilities to be replaced,²⁶ and the replacement facilities must be in the same right-of-way and be substantially equivalent in design capacity to the existing facilities.²⁷

²⁵ As discussed above, if a company plans to rely on section 2.55(a) to install auxiliary facilities in conjunction with a project under its Part 157 blanket construction certificate that it is subject to prior notice, the company must give the Commission notice of the type and planned location of auxiliary facilities at least 30 days prior to installation. *See* 18 CFR 2.55(a)(2)(ii) (2013).

²⁶ In the case of existing facilities constructed pursuant to blanket certificate authority, the facilities' construction was subject to the blanket program's section 157.206(b) environmental compliance provisions.

²⁷ For example, if a natural gas company wants to replace a deteriorated section of 12-inch-diameter pipe with 24-inch-diameter pipe, it generally cannot rely on section 2.55(b) to undertake such work, as the use of larger pipe could require larger equipment and greater ground disturbance and thus raise environmental issues that were not considered when the 12-inch-diameter pipeline was authorized. In addition, while the replacement of deteriorated facilities is necessary to maintain existing service levels, section 2.55 does not provide the opportunity for a company's customers to raise issues regarding the replacement project's cost. Thus, limiting replacement activities under section 2.55(b) to the construction of facilities that will be substantially equivalent in design capacity to the existing facilities is appropriate. If a company believes that there is a need for the replacement facilities to have significantly greater capacity, it can undertake the replacement project under its Part 157, Subpart F blanket construction certificate program, subject to the regulations' cost limits and environmental conditions. If the replacement project will exceed the blanket certificate cost limits or the company cannot satisfy the blanket certificate regulations' environmental conditions, the company can file an application for case-specific certificate authority and initiate a proceeding in which its customers and other parties can raise any concerns. Note that as discussed in the NOPR, to account for subsequent modifications having been made to original

(continued...)

16. Since the wording of section 2.55 of the regulations cannot work to exclude auxiliary and replacement facilities from the scope of our jurisdiction under NGA section 7, section 2.55 effectively provides not an NGA-exemption, but a type of “blanket” certificate authority, so that a company does not need to seek additional, specific certificate authority to add minor auxiliary facilities to its previously certificated facilities or to replace its previously certificated facilities. Section 2.55 provides pre-granted or automatic certificate authorization to a specific, limited set of facilities, and does so to avoid triggering an unnecessary level of review for certain minor modifications to an existing or pending interstate transmission system. Section 2.55 is both a precursor and complement to our Part 157 blanket certificate program. By providing non-case specific certificate authorization for limited classes of facilities, the section 2.55 and blanket certificate regulations permit companies to satisfy the requirements of section 7(c) without having to apply for individual case-specific certificates for each and every modification to their systems.

2. **Section 2.55 Siting and Construction Limitations**

17. In 1994, we first had cause to clarify the parameters of section 2.55, in response to a request to increase operating pressures and make other changes to a pipeline system in

facilities – in particular blanket certificate projects that in adding to or altering original facilities establish new permanent right-of-way and new temporary work space – we will revise the section 2.55(b)(1)(ii) requirement that replacements must be confined to areas authorized for the “original facility” to allow for replacements within areas authorized for the “existing facility.”

Arkla Energy Resources Company (Arkla).²⁸ In reviewing the existing facilities, it came to light that Arkla had undertaken several years before, in reliance on section 2.55(b), to replace 91 miles of old 18-inch-diameter pipe on a segment of its system by abandoning it in place and installing new 20-inch-diameter pipe along a parallel path, which had required widening the existing right-of-way along portions of the route by an additional 25 feet. We acknowledged that (1) section 2.55(b) did not “specify whether replacement facilities must be constructed in the existing right-of-way,” and that (2) there was no case law that “directly addressed this issue.”²⁹ However, we explained that construction outside the right-of-way that was studied and authorized for the existing facilities potentially could have environmental impacts that had not been included in our environmental review of the facilities being replaced.³⁰ Thus, we clarified that:

[S]ection 2.55(b) means that replacement facilities must be constructed within the existing right-of-way. The reason is simple. The authority to replace a facility and to establish a right-of-way should be limited by the terms and locations delineated in the original construction certificate. Thus, a certificate holder that later establishes a new right-of-way for purposes of replacement engages in an unauthorized activity

²⁸ 67 FERC ¶ 61,173 (1994), *order on reh’g, NorAm Gas Transmission Company*, 70 FERC ¶ 61,030 (1995) (*Arkla/NorAm*). Arkla was in the process of changing its name to NorAm at the time the Commission issued its order finding that Arkla’s replacement project did not qualify to go forward under section 2.55(b). Thus, Arkla sought rehearing under its new name.

²⁹ 67 FERC ¶ 61,173 at 61,516.

³⁰ *Id.*

which is outside the parameters of the original certificate order.³¹

18. We subsequently codified this *Arkla/NorAm* clarification in Order No. 603 by amending section 2.55(b) to add the phrase “will be located in the same right-of-way or on the same site as the facilities being replaced, and will be constructed using the temporary work space used to construct the original facility.”³² In this rulemaking

³¹ *Id.* As we noted in *Arkla/NorAm*, at the time replacement activities limited to the existing right-of-way were categorically excluded by section 380.4(24) based on the assumption that impacts on the environment will be insignificant if construction activities to replace facilities are limited to work within a pipeline’s existing compressor station yard or right-of-way. Following *Arkla/NorAm*, we concluded that even if construction activities will be confined to the existing right-of-way, there may be the need for further environmental review if a replacement project involves the construction of extensive facilities, or there have been changes in land use over time in the vicinity of the existing facilities (for example, the existing facilities may have been constructed in an area that was rural in nature at the time but is now densely populated), or the pipeline company’s replacement project may be associated with the construction of other, non-jurisdictional facilities that could also have environmental impacts. We rectified the situation in Order No. 544, explaining that because we have “a responsibility under NEPA to review replacement activities that pose potentially serious, adverse environmental impact ... we need to be informed of such activities before they occur.” Order No. 544, 57 FR 46487, at 46491 (October 9, 1992); FERC Stats. & Regs. ¶ 30,951, at 30,686-87 (1992). Thus, while most replacement projects involve minor facilities and no potential for significant environmental impacts, we amended section 2.55(b) to require that companies notify us at least 30 days prior to commencing replacement projects so that there is time for staff to assess whether the project needs to be delayed in order to conduct further environmental review.

³² Order No. 603, 64 FR 26572 (May 14, 1999), FERC Stats. & Regs. ¶ 31,073 (1999). INGAA asserts the NOPR in this proceeding erroneously stated that the Commission did not address section 2.55(a) auxiliary facilities in Order No. 603 when it revised section 2.55(b) to limit replacement projects to the originally authorized rights-of-way and work spaces for the existing facilities. While, as noted above, Order No. 603 did indeed address section 2.55(a) auxiliary facilities, specifically adding the notification requirements of section 2.55(a)(2), Order No. 603 did not address the right-of-way

(continued...)

proceeding, we are clarifying that this same right-of-way/work space limitation is equally applicable to auxiliary installations under section 2.55(a). Rather than provide clarification in a case-specific proceeding, as the Commission did in *Arkla/NorAm*, and then revise the regulation in a subsequent rulemaking proceeding, here we conflate clarification-to-codification for section 2.55(a) into this single proceeding.

19. As in *Arkla/NorAm*, construction outside the right-of-way could have environmental impacts that were not included in our environmental review of the existing facilities. In such circumstances, we could not fulfill our NEPA responsibilities if we were to allow companies to continue acquiring additional rights-of-way and work spaces

requirements relating to the installation of auxiliary facilities because the Commission assumed that there would be no need for gas companies to go outside previously authorized or proposed rights-of-way and work spaces in order to install minor facilities that, as specified in section 2.55(a), are “merely auxiliary or appurtenant” to and “only for the purpose of obtaining more efficient or more economical operation of the authorized or proposed transmission facilities.” We explained in the NOPR in this proceeding that Order No. 603, as it pertained to spatial limitations on the construction of facilities, dealt specifically with replacement facilities, and therefore only discussed the rationale for requiring section 2.55(b) replacement facilities to be located within an existing right-of-way. We also explained that no party raised any issue in the Order No. 603 rulemaking proceeding regarding spatial limitations on the installation of auxiliary facilities under section 2.55(a), and therefore we saw no need in Order No. 603 to discuss whether the construction and location of auxiliary installations to enhance existing facilities must fall within the same footprint as the existing facilities. NOPR, FERC Stats. & Regs. ¶ 32,696 at P 15. The NOPR also pointed out that nothing in Order No. 603 evinced an intent to permit auxiliary facilities or auxiliary installation activities outside of authorized rights-of-way and work spaces. *Id.* Thus, although we accept that the NOPR could have provided a more precise summary of Order No. 603, we reject INGAA’s claim that the NOPR misrepresented Order No. 603, particularly since the NOPR describes concerns discussed in Order No. 603 with respect to auxiliary facilities, and recites the resulting revisions made to section 2.55(a). *Id.* P 4.

to install auxiliary facilities under color of section 2.55(a) in areas not included in the environmental reviews for existing and proposed transmission facilities. We must ensure that environmental reviews are performed and appropriate mitigation measures identified, and this NEPA obligation extends to additional areas landowners may cede to gas companies for jurisdictional activities or facilities. While the environmental review conducted by the Commission in a certificate proceeding encompasses a corridor wider than the right-of-way and temporary work spaces eventually authorized, land usage and other circumstances can change over time, particularly in areas in which no jurisdictional facilities are located, and the Commission's findings based on its environmental review in a past certificate proceeding may no longer be valid for the entire corridor originally studied. This makes it reasonable and necessary to confine all auxiliary facilities and construction activities under section 2.55 to Commission-authorized rights-of-way and work spaces.

20. INGAA states that “[t]he Commission has not been confronted with issues resulting from auxiliary installations outside an existing right-of-way similar to the issues that arose in *Arkla/NorAm* from replacement facilities.”³³ We acknowledge that we are not aware of any section 2.55(a) auxiliary activities outside the authorized right-of-way approaching the scale of the section 2.55(b) replacement activities outside the right-of-

³³ INGAA's January 2013 Comments at p. 15.

way that came to light during the *Arkla/NorAm* proceeding.³⁴ Nevertheless, the issues raised for sections 2.55(a) and (b) activities are the same.³⁵ We covered these issues in the NOPR, identifying our principle concern as the absence of any review of the environmental impacts of activities outside of authorized areas.

21. INGAA emphasizes that “cathodic protection equipment,” “electrical and communication equipment,” “pig launcher/receivers,” and “buildings” are listed specifically in section 2.55 as examples of auxiliary installations, and contends these types of facilities typically extend beyond a pipeline’s right-of-way and/or require additional work space to install.³⁶ We do not find these examples sufficient to preclude

³⁴ Arkla had made numerous egressions from the existing right-of-way and acquired significant additional land rights without the Commission’s knowledge in order to widen the existing right-of-way by 25 feet along significant portions of the 91 miles of pipeline that was replaced. Arkla had needed the wider right-of-way in order to use larger-diameter replacement pipe that it laid alongside the old pipe that was abandoned in place.

³⁵ See *Arkla* 67 FERC ¶ 61,173 at 61,517-18.

³⁶ See INGAA’s January 2013 Comments at p. 31. In several instances, commentors describe contemporary cathodic protection components as often being located outside an established right-of-way. However, in 1949 when “cathodic protection equipment” was included in section 2.55(a), cathodic protection commonly was provided by passive systems that rely on the electrical potential between the pipeline and anode. Such systems require close spacing between the pipeline and anode, and therefore would likely be placed within the right-of-way. Thus, the inclusion of cathodic protection equipment in the list of auxiliary facilities that may qualify for purposes of section 2.55(a) reflected the fact that, at least in some instances, additional right-of-way or work space is not needed to install such equipment. The 1949 inclusion of “cathodic protection equipment” in section 2.55(a) did not anticipate the impressed current systems commonly used today, which require that anodes be placed some distance (e.g., 100 meters) from the pipeline, far beyond the typical width of right-of-way needed or authorized for laying

(continued...)

our action here. While we understand that the installation of any particular one of the types of facilities named in section 2.55(a)(1) may require additional right-of-way or work space, if this is the case, then that particular facility could not be installed pursuant to section 2.55(a). There are any number of cathodic protection equipment, electrical and communication equipment, pig launcher/receivers, and buildings that have been and can be added without straying beyond the confines of previously authorized areas, and such facilities can be installed pursuant to section 2.55(a). As discussed below, section 2.55(a) will continue to reduce the burden that would be imposed if every natural gas facility required case-specific certificate authorization. Our decision to revise our regulations to explicitly confine section 2.55(a) auxiliary facilities to Commission-authorized rights-of-way and work spaces is necessary to clarify industry misinterpretations and to meet our obligations under NEPA, as discussed above, which cannot be fulfilled if we allow companies to construct auxiliary facilities in areas outside of existing rights-of-way. Further, while less convenient, most auxiliary installation projects that do not qualify under section 2.55(a) because additional right-of-way or work space is needed can be undertaken by companies by relying on their Part 157 blanket construction certificates, subject to those regulations' environmental and cost conditions. If a company cannot satisfy the blanket certificate regulations' environmental and cost conditions, it can file

pipe in the ground. Nonetheless, we note that impressed current systems which use deep well anode beds, can be set entirely within the typical width of a right-of-way and can qualify under section 2.55(a).

an application to initiate a proceeding for case-specific certificate authority, during which the Commission will conduct an environmental review and identify any appropriate mitigation measures.³⁷

22. Commenters raised specific examples. INGAA, Southern Star, and National Fuel observe that the list of auxiliary installations includes “buildings,” and contend that generally it is not feasible to construct buildings within the previously authorized right-of-way containing existing pipeline facilities. They assert that the inclusion of “buildings” in section 2.55(a) therefore is at odds with the NOPR’s position that section 2.55(a) has never authorized the construction of auxiliary facilities on newly acquired right-of-way. Obviously, as Southern Star points out, a gas company is not going to be able to locate a large new headquarters building for hundreds of personnel within an existing right-of-way authorized for a pipeline.³⁸ However, we do not agree that the inclusion of “buildings” in section 2.55(a) implicitly validates companies’ reliance on section 2.55(a) to construct even small buildings such as a tool shed on newly

³⁷ For example, a company that needs a larger right-of-way and more work space for pig launching equipment will not be able to install the equipment under its Part 157 blanket certificate if in the course of performing required surveys an endangered species is identified. In that case, the company may still be able to go forward with the project if it files an application for case-specific certificate authority, depending on the results of the Commission’s environmental review, including the required formal consultation with the U.S. Fish and Wildlife Service, and whether adequate mitigation measures to protect the endangered species can be fashioned.

³⁸ Southern Star’s Comments at p. 4.

acquired right-of-way.³⁹ While section 2.55(a) can be relied upon to construct housing for compression, communication, electrical and other equipment and facilities needed to operate pipeline systems, section 2.55(a) can only be relied upon when such structures can be located within existing or proposed rights-of-way or facilities' site. Just as section 2.55(a) cannot be relied upon to install auxiliary facilities if a company will need to use a temporary work space that was not studied during a prior environmental review by the Commission, section 2.55(a) also is not intended for auxiliary installations where a gas company's plans include other types of land use described by INGAA and National Fuel, such as construction of a new access road or the temporary use of previously undisturbed land to store pipe, equipment, or machinery. While the commentors point out that a company generally does not need certificate authority to acquire the land rights to construct an access road or to store equipment and machinery, this makes no difference in whether a project qualifies under section 2.55(a).

23. Our goal is to ensure that the authorization provided by section 2.55 does not inadvertently work to deprive the Commission of the opportunity to conduct an environmental review and impose appropriate mitigation measures in any situation where a natural gas company's construction activities may have adverse environmental impacts. Thus, even when all planned auxiliary facilities can be located entirely within an existing or proposed right-of-way, a project does not qualify under section 2.55(a) if construction

³⁹ We note that a new corporate headquarters building is not a "natural gas facility" which requires certification under the NGA.

of the auxiliary facilities will be undertaken in conjunction with other activities, such as building an access road or clearing and leveling nearby areas to store materials or equipment, that will occur outside the existing or proposed right-of-way and use areas that have not been environmentally reviewed in connection with the past or pending construction of other jurisdictional facilities. If a pipeline company plans to disturb any area in the process of constructing auxiliary facilities that was not or will not be subject to environmental review, the company must undertake the auxiliary installation under the Part 157 blanket certificate regulations or file an application for case-specific certificate authority so that the Commission has an opportunity to conduct an environmental study to consider related activities in the vicinity of the auxiliary installation activities, such as construction of an access road or use of land to store materials or machinery.

24. INGAA also comments on section 2.55(a)'s specification of "electrical and communication equipment," a category that has expanded enormously since 1949. INGAA states that a communications tower qualifies as "electrical and communication equipment" and "typically involves erecting a 40-foot-tall, three-leg tower with associated microwave parabolic dish antennas, ... may include a self-contained communications building and backup generation," and requires "a 40-foot by 60-foot area that typically would not fit within a pipeline's existing right-of-way."⁴⁰ While we recognize it is unlikely the entire footprint of such a communication tower can fit within

⁴⁰ INGAA's January 2013 Comments at p. 31.

the confines of an existing authorized right-of-way or facility site, as noted above, we find that this example is as an exception to section 2.55(a) and not characteristic of all electric and communication equipment, some of which can be installed within an existing right-of-way. As stated above, we cannot fulfill our NEPA responsibilities if we allow section 2.55(a) projects to use right-of-way and work space areas that have not been reviewed for environmental purposes. We have explained that if a structure is needed to ensure a company's compliance with current regulations (e.g., safety, security, or reliability standards), but does not meet section 2.55 right-of-way/work space requirements, then the company must obtain blanket or case-specific certificate authorization for the project.

25. Moreover, the fact that these types of facilities are specifically listed in section 2.55(a) does not mean that companies can necessarily rely in all instances on section 2.55(a) to install them.

26. As discussed herein, when companies plan to construct auxiliary facilities in conjunction with projects for which they need to file applications under Part 157, Subpart A for case-specific certificate authority, section 2.55(a)(2)(iii) requires the companies to describe in the case-specific certificate proceedings any auxiliary facilities that they plan to install under section 2.55(a) and provide location maps.⁴¹ Thus, in a case-specific certificate proceeding, a company needs to include in the proposed right-of-way and

⁴¹ See n.9.

temporary work spaces for which it seeks certificate authorization any additional areas it will need to install the planned auxiliary facilities, notwithstanding that it intends to rely on section 2.55(a) for its authorization to construct the auxiliary facilities.

27. In addition, if a company has already requested or received a case-specific certificate, or is constructing under its Part 157 blanket certificate subject to those regulations' prior notice provisions, and decides prior to placing those facilities in service that it also wants to install auxiliary facilities, then section 2.55(a)(2)(ii) requires that the company give the Commission at least 30 days advance notice so that staff has time to consider any additional environmental impacts associated with the auxiliary facilities.⁴²

The fact that section 2.55(a)(2)(ii) literally requires advance notice only if the auxiliary facilities are to be added to facilities that are not yet in service does not mean that companies can escape environmental review when they want to add auxiliary facilities to facilities that are already in service. The installation of auxiliary facilities within previously-established rights-of-way and work spaces will be within the scope of a completed environmental review and conform to the mitigation measures resulting from that review, whereas the installation of auxiliary facilities outside of established rights-of-way or work spaces can impose unstudied (and thus unmitigated) environmental impacts, which is why section 2.55(a) and (b) activities must be restricted to rights-of-way, facility sites, and work spaces that have been reviewed and approved.

⁴² See 18 CFR 2.55(a)(2)(ii) (2103). The advance notification must include a description of the auxiliary facilities and their planned location.

28. The commentors stress that in *Arkla/NorAm* and Order No. 603, the Commission focused its attention on section 2.55(b) and infer from this that the right-of-way/work space limitation that was explicitly applied to replacement facilities is implicitly inapplicable to auxiliary installations. This inference is incorrect. It was companies' overly expansive reading of section 2.55(b), first noted and addressed in *Arkla/NorAm*, which prompted the Commission to revise section 2.55(b) in Order No. 603 to limit companies' replacement project activities under that section to the use of existing rights-of-way and previously disturbed temporary work spaces. We were not aware, at that time, of companies also relying on section 2.55(a) to go outside previously authorized areas, in that case in order to add auxiliary facilities to existing facilities. Thus, when we issued Order No. 603, we had no reason to lay out our expectations regarding locational requirements as they pertained to auxiliary installations under section 2.55(a), even though we were clarifying those requirements with respect to replacement projects under section 2.55(b).⁴³

⁴³ As WBI Energy observes: "Section 2.55(b) projects can involve replacing dozens or even hundreds of miles of pipeline and transmission service related facilities. Section 2.55(a) auxiliary installations, on the other hand, are much smaller projects with limited scope such as pig launchers, valves and cathodic protection equipment." WBI Energy's Comments at p. 5. As we have observed: "Auxiliary installations and taps generally involve minor facilities; however, replacement of facilities may involve the removal and replacement of extensive mainline facilities." *Interim Revisions to Regulations Governing Construction to Facilities Pursuant to NGPA Section 311 and Replacement of Facilities*, Order No. 525, 55 FR 33011 at 33013, FERC Stats. & Regs. ¶ 30,895 at 31,812 (1990).

29. However, over the last several years, we began to receive anecdotal indications that the industry might be applying an unwarrantedly expansive interpretation to section 2.55(a).⁴⁴ In response, Commission staff – in conferences, meetings, and other public and private settings – sought to remind the industry that auxiliary installations, like replacement projects, must not stray outside of authorized rights-of-way and work spaces. While INGAA states that Commission staff’s consistent and insistent stance in this matter prompted its petition requesting that the Commission disavow staff’s statements, INGAA’s request for clarification also serves to highlight how the industry is improperly interpreting section 2.55(a) to undertake construction of facilities that do not qualify under that section because they involve siting the facilities and/or engaging in construction activities outside of authorized areas.

30. When *Arkla/NorAm* clarified that section 2.55(b) was restricted to replacements within the originally authorized right-of-way for the facilities being replaced, companies complained the Commission was upending long-held industry expectations and imposing an impractical constraint. Comments on the NOPR in this proceeding regarding auxiliary projects under section 2.55(a) recycle the objections presented on rehearing in *Arkla/NorAm*, namely: “the Commission failed to articulate the reason for its change in policy”; “the Commission’s rationale underpinning” its “clarification is inadequate and

⁴⁴ Commission staff received questions from the industry inquiring whether it was appropriate to install certain facilities (including, but not limited to, cathodic protection equipment, pig launchers, communications equipment) outside of the company’s authorized right-of-way using section 2.55 authority.

inconsistent with the history and purpose of section 2.55(b)”; the “clarification is unduly burdensome because it deprives pipelines of needed flexibility when repairing mainline facilities” and “that less burdensome alternatives are available”; “clarification constituted an arbitrary and capricious action because it will create significant and unjustifiable regulatory burdens”; and the right-of-way specification constituted a “rulemaking which failed to satisfy the notice and comment procedures of section 533 of the Administrative Procedure Act.”⁴⁵

31. The discussion, rationale, and result in the 1995 *Arkla/NorAm* rehearing could serve as our response to the comments on the NOPR. The Commission’s orders in *Arkla/NorAm* “aimed at removing any possible confusion within the industry concerning section 2.55”⁴⁶ by responding to the “mistaken belief”⁴⁷ that section 2.55 permitted companies to replace obsolete facilities with new facilities outside rights-of-ways that were authorized for the facilities being replaced or to engage in any construction activities outside the existing right-of-way and previously disturbed work spaces. The clarification provided by the NOPR in this proceeding was aimed at the same mistaken belief on the part of some industry members with respect to section 2.55(a). Just as the

⁴⁵ *Arkla/NorAm*, 70 FERC ¶ 61,030 at 61,099. Later, when the Commission proposed to revise the text of section 2.55(b) to incorporate the *Arkla/NorAm* clarification, comments emphasized the impracticality of corralling replacement construction activities within the originally authorized rights-of-way and workspaces.

⁴⁶ *Id.*, at 61,100.

⁴⁷ *Id.*

Commission explained in *Arkla/NorAm* that, despite arguments to the contrary, it had “not changed its interpretation of what replacement facilities qualify” and can be installed under section 2.55(b),⁴⁸ the clarification in the NOPR in this proceeding did not reflect a change in the Commission’s interpretation of what auxiliary facilities can be installed under section 2.55(a). Thus, we could have issued an instant Final Rule to codify our clarification of section 2.55(a) without providing notice and opportunity, just as the Commission has modified section 2.55 several times in the past without notice and comment when such actions were interpretive in nature.⁴⁹

32. Until relatively recently, the Commission had always assumed that companies understood when they relied on section 2.55(a) to add auxiliary facilities to facilities already in service, the new auxiliary facilities must be attached or immediately adjacent to the existing facilities and within the right-of-way authorized for the existing facilities and no additional right-of-way or work space could be acquired or used in order to add

⁴⁸ *Id.* 61,099-100.

⁴⁹ In *Arkla/NorAm*, the Commission noted previous amendments to section 2.55 that were treated as matters of interpretation, and as such implemented absent notice or hearing. *Arkla/NorAm*, 70 FERC ¶ 61,030 at 61,100 and n.10, *citing* Order No. 220, 23 FPC 499 (1960) (including delivery taps as qualifying facilities for purposes of section 2.55); Order No. 241, 27 FPC 33 (1962) (revising the description of qualifying replacements for purposes of section 2.55); and Order No. 148-A, 49 FPC 1046, 1047 (1973) (excluding delivery points). *Arkla/NorAm* also cited, at n.11, *American Mining Congress v. Mine Safety & Health Admin.*, 995 F.2d 1106, 1112 (D.C. Cir. 1993), which describes traits of interpretive rules, to show these modifications to section 2.55 constituted interpretations that, consistent with the APA, did not require notice or hearing.

the auxiliary facilities to the existing facilities.⁵⁰ As we did in *Arkla/NorAm* for section 2.55(b), we apply “a common-sense reading” to section 2.55(a) and reach the same conclusions as we did with respect to our prior clarification of section 2.55(b), so that those auxiliary and replacement activities that qualify for purposes of section 2.55, and therefore require no additional certificate authority, are “delineated by the parameters of the certificate”⁵¹ authorizing the transmission facilities that will be made more efficient or economic by adding auxiliary facilities under section 2.55(a) or be replaced under section 2.55(b).⁵²

33. Similarly under this common sense reading of section 2.55, we conclude that “to the extent that facilities are built outside the scope of the certificate, such facilities are unauthorized.”⁵³ Thus, if auxiliary facilities are to be added to existing or proposed interstate transmission facilities, the auxiliary facilities will qualify for purposes of section 2.55(a) only if they will be located within the same right-of-way as the

⁵⁰ See, e.g., Order No. 603-A, 64 FR 54522 at 54523, FERC Stats. & Regs. ¶ 31,081: “Traditionally, Section 2.55 limited the installation of auxiliary facilities to facilities installed on an existing transmission system.” This holds for all section 2.55 facilities (including delivery points and taps during the period when they were covered under section 2.55), which have always been additions to or replacements of portions of a larger existing system, and as such have always been integrated into or substituted in place of jurisdictional facilities.

⁵¹ 70 FERC ¶ 61,030 at 61,100.

⁵² *Id.*

⁵³ *Id.*

transmission facilities⁵⁴ and construction activities will be limited to the temporary workspaces authorized for construction of the transmission facilities and conform to the conditions of the certificate authorizing construction of the transmission facilities (e.g., all required mitigation measures, such as erosion control or revegetation protocols, that applied to the case-specific certificate or Part 157 blanket certificate authority under which the transmission facilities were constructed).⁵⁵

34. INGAA continues to argue that two Commission staff letters – one from 1984 and another from 1998 – support INGAA’s position that current Commission staff has been implementing a change in Commission policy by telling companies that they cannot rely on section 2.55(a) to construct auxiliary facilities if they need additional right-of-way or

⁵⁴ Notice of Proposed Rulemaking, 68 FR 4120, FERC Stats. & Regs. ¶ 32,567 at 34,679. *See also Emergency Reconstruction of Interstate Natural Gas Facilities Under the Natural Gas Act*, Order No. 633, 68 FR 31596, at 31598-99 (May 28, 2003); FERC Stats. & Regs. ¶ 31,144, at 30,399 (2003).

⁵⁵ The bounds of a section 2.55 facility’s authorization reflect the certificate conditions of the transmission system it modifies. For example, in Order No. 603-A, 64 FR 54522, FERC Stats. & Regs ¶ 31,081, at 30,921-22, the Commission was asked to permit section 2.55(b) projects to use “Commission-approved rights-of-way unrelated to the construction of facilities being replaced” on the grounds that “any existing right-of-way that has already been disturbed for pipeline construction, has been reviewed” for environmental impacts. The Commission rejected this request, reasoning that “the existing right-of-way that was used to construct the original facilities should be sufficient,” since replacements “should only involve basic maintenance or repair to relatively minor facilities where the Commission has determined that no significant impact to the environment will occur.” The Commission noted that in most instances gas companies would be able to “use their blanket certificate authority to perform projects involving more extensive work that would need additional workspace, including the use of other unrelated rights-of-way,” since the blanket procedures “would allow for the required additional environmental scrutiny.”

previously undisturbed areas as work space. As discussed in the NOPR, INGAA describes the April 1998 letter signed by Commission staff as accepting a proposed section 2.55(a) installation of cathodic protection equipment outside the right-of-way for the existing pipeline facilities.⁵⁶ We note that in December 1997, Commission staff had issued a letter addressing what appears to be the same proposed cathodic protection project. In this earlier letter, staff recited the requisite section 2.55 criterion “that, consistent with the Commission’s previous determinations regarding 18 CFR § 2.55(b), facilities constructed under section 2.55(a) must be placed within the permanent right-of-way.”⁵⁷ Staff explained in the December 1997 letter that because a portion of the project would be located “in a new right-of-way ... in agricultural soil which was not previously disturbed by the pipeline construction,”⁵⁸ the project could not be installed under section 2.55(a); consequently, staff directed the company to “file an application under Section 7 of the Natural Gas Act for authorization.”⁵⁹

⁵⁶ Letter signed by the Director of the Commission’s Office of Pipeline Regulation, dated April 3, 1998; FERC eLibrary Accession No. 19980408-0242.

⁵⁷ Letter signed by the Director of the Commission’s Office of Pipeline Regulations, dated December 16, 1997, p. 1 (citing *Arkla/NorAm* and *Columbia Gas Transmission Corporation*, 68 FERC ¶ 61,173 (1994), FERC eLibrary Accession No. 19971223-0120).

⁵⁸ *Id.*

⁵⁹ *Id.*

35. Neither the April 1998 follow-up letter cited by INGAA accepting the cathodic protection installation under section 2.55(a) nor anything else in the record states where the new facilities ultimately were located. INGAA assumes that the new equipment was installed in new right-of-way, since the December 1997 letter describes the ground beds as being outside the right-of-way. We believe it is as likely that after receiving staff's 1997 letter, the company determined that it could locate the ground beds within the same right-of-way containing the existing pipeline facilities, in which case staff's December 1997 letter and April 1998 letter are consistent and correct; otherwise, as we acknowledged in the NOPR, the April 1998 letter did not reflect Commission policy correctly.⁶⁰

36. The 1984 Commission staff letter identified by INGAA stated that proposed facilities to remove liquid condensate and free water could qualify as an auxiliary installation for purposes of section 2.55(a) as they would increase the efficiency and enhance the flexibility of the existing interstate pipeline system without altering the capacity of the system.⁶¹ INGAA emphasizes that staff's letter reached this determination, notwithstanding that the letter's description of the project indicated that some of the proposed facilities would be located outside the existing right-of-way. We

⁶⁰ NOPR, FERC Stats. & Regs. ¶ 32,696 at P 11, n. 18 (cross-referenced at 141 FERC ¶ 61,228).

⁶¹ *Trunkline Gas Company*, Docket No. CP84-394-000, letter order signed by the Director of the Commission's Office of Pipeline Regulation, dated May 25, 1984.

find no indication that the location of the new facilities was taken into account in the one-page, two-paragraph staff letter which focuses exclusively on whether the new facilities would function, as the regulation requires, “only for the purpose of obtaining more efficient or more economical operation.” The order’s failure to recognize the site of some the of proposed facilities as outside of the existing right-of-way appears to have been be an oversight that led to a wrong result, since locating any of the planned new auxiliary facilities outside the existing right-of-should have disqualified the project for purposes of section 2.55(a).

37. At most, INGAA has identified two instances where Commission policy may not have been applied correctly. Further, both examples cited by INGAA were staff letters; neither was a Commission order. INGAA cannot plausibly argue that these two questionable examples must be accepted as representing a clear statement of Commission policy, particularly when INGAA acknowledges it filed its request for clarification expressly because “[t]he Staff of the Federal Energy Regulatory Commission . . . has taken the position in informal conferences with pipelines and in industry meetings that Section 2.55(a) of the Commission’s regulations only applies to auxiliary installations in existing rights-of-way and where the original work space is used,”⁶² and because it strongly disagrees with “Commission Staff’s position . . . that the same right-of-way and work space requirements made expressly applicable to the replacement of facilities under

⁶² INGAA’s April 2, 2012 *Request for Clarification* at p. 1, Docket No. RM12-11-000 (*footnote omitted*).

Section 2.55(b) of the Commission's regulations are implied requirements of Section 2.55(a)."⁶³ In any event, regardless of whether some companies have thought they had some reasonable basis for expecting that construction activities to add auxiliary facilities to existing facilities can extend outside the previously authorized areas for the existing facilities,⁶⁴ we cannot fulfill our NEPA responsibilities if we allow companies to continue acquiring additional rights-of-way and work spaces to install auxiliary facilities under color of section 2.55(a) in areas not included in the environmental reviews for existing and proposed transmission facilities. We must ensure that environmental reviews are performed and appropriate mitigation measures identified, and this NEPA obligation extends to additional areas landowners may cede to gas companies for jurisdictional activities or facilities.

38. INGAA and WBI Energy point to the Commission's document titled *Guidance on Repairs to Interstate Natural Gas Pipelines Pursuant to FERC Regulations (Guidance Document)*, which states that "all replacement facilities must be constructed within the same right-of-way, compressor station, or other aboveground facility site as the facility

⁶³ *Id.*

⁶⁴ INGAA declares that "[f]or over six decades, the interstate pipeline industry has considered auxiliary installations beyond the right-of-way to be acceptable." INGAA's January 2013 Comments at p. 36. Echoing objections raised in *Arkla/NorAm* and Order No. 603, INGAA adds that our clarification "represents a sea change in how the industry will address such installations, thereby raising costs, limiting efficiencies, and threatening expedited enhancement of pipeline integrity by making such installations more difficult to effectuate." *Id.* at 39.

being replaced,” but does not make a similar statement about auxiliary installations.⁶⁵

INGAA maintains this omission “reinforces the decisions” made by Commission staff in the above-discussed 1997 and 1984 letters.

39. We do not share this assessment. The Guidance Document’s summation of section 2.55, while highlighting the need for replacements to stay within authorized boundaries, does not include any discussion that would indicate auxiliary installations are intended to be exempt from this same constraint. The Guidance Document on repairs reflects the Commission’s experience with section 2.55 projects, which is that the scale and impacts of section 2.55(b) replacement projects (e.g., *Arkla/NorAm*) can far exceed those of section 2.55(a) auxiliary installations. This is, as explained above, why we saw a need to spell out the right-of-way/work space restriction for replacements, and why – until recently – we had not recognized that there apparently is a need to do the same for auxiliary facilities.

3. **Environmental Issues**

40. INGAA contends the NOPR was incorrect in suggesting that all certificated gas facilities have undergone an environmental review prior to being constructed, because an environmental review was not a part of the Commission’s certificate proceedings until after NEPA’s promulgation in 1969. We acknowledge that NEPA altered the methodology employed by the Commission to evaluate the environmental impacts of a

⁶⁵ See <http://www.ferc.gov/industries/gas/gen-info/guidance.pdf>, at p. 3 (2005). (An updated Guidance Document was issued in August 2013).

proposed project. For example, since NEPA, the Commission's orders granting applications for construction authorization generally have included a separate section addressing the potential environmental impacts of an applicant's proposed reasonable alternatives.⁶⁶ However, the Commission has long recognized that determining whether proposed facilities are required by the public convenience and necessity requires that environmental consequences be taken into account (albeit in a far less methodical and thorough manner), and, when warranted, that constraints be imposed on projects' location, construction, and operation. For example, while prior to NEPA the Commission did not require an applicant to search historical county and state records to identify old burial sites no longer clearly marked as we do today, the Commission would not have permitted an applicant to lay a pipeline across a visible cemetery and any approval for a pipeline to cross any isolated graves would have been conditioned on their appropriate relocation.

41. As the Commission observed in 1990 in adopting the advance notification requirement for more extensive replacement projects under section 2.55(b),⁶⁷ when that section was promulgated in 1949 "there were fewer pipeline construction projects and the

⁶⁶ See Commission Regulations Implementing NEPA, 18 CFR pt. 380 (2013).

⁶⁷ As discussed above, the 30-day advance notification requirement applies to a replacement project under section 2.55(b) if project costs will exceed the Part 157 blanket certificate regulations' current cost limits for projects that qualify under the those regulations' automatic provision.

majority of those projects involved relatively short lengths of small diameter pipeline.”⁶⁸

The Commission explained that the advance notification requirement was needed because over the years “an integrated and sophisticated national pipeline gridwork has developed”; and “[w]hereas replacement of facilities when § 2.55 was adopted could be assumed to involve minor projects, today, replacement of facilities could involve hundreds of miles of large diameter pipeline.”⁶⁹ The same reasoning holds for auxiliary installations, given the increase in the number, scale, and potential impacts of section 2.55 activities.

42. While our NOPR in this proceeding clarified that section 2.55(a) has always been limited to installations in authorized areas that have been or will be subject to environmental review, the NOPR also served to provide an opportunity for parties to convince us that this limitation is not necessary. Not only do INGAA’s comments not

⁶⁸ *Interim Revisions to Regulations Governing Construction of Facilities Pursuant to NGPA Section 311 and Replacement of Facilities*, Order No. 525-A, 53 FERC ¶ 61,140, at 61,467 (1990).

⁶⁹ *Id.* The Commission also explained in Order No. 525-A that the advance notification requirement was needed for more extensive replacement projects under section 2.55(b) because changes could have occurred since an existing facility was put in place (e.g., the character of a region shifting from rural to residential), stating that:

[J]ust because an area was disturbed when the pipeline was originally installed does not mean that replacing the old pipe with a new pipe will not potentially raise new environmental concerns. Such an action must be assessed in light of current land use, regulations, and concerns about erosion, sediment control, impact on streams and soil, threatened and endangered species and potential PCB contamination.

change our view, they serve to reinforce our belief that section 2.55 activities need to be confined to areas included within the existing right-of-way and previously-used construction workspace by pointing out that section 2.55 can be relied upon to replace or add auxiliary facilities to transmission systems that were authorized prior to NEPA when the Commission's environmental review would have been less rigorous and might not have identified project impacts that would come to light with today's greater scrutiny.

4. **Compliance with Executive Orders**

43. The commentors claim the NOPR fails to follow Executive Orders directing agencies to weigh the burden and benefit of regulations.⁷⁰ They point out that section 2.55 was intended to avoid the burden of companies' having to obtain case-specific certificate authorization for certain routine activities, and argue the purportedly new right-of-way/work space constraint will preclude some installations of auxiliary

⁷⁰ Commenters cite Executive Order No. 13,563, *Improving Regulation and Regulatory Review*, 76 FR 3821 (January 21, 2011) (directing executive agencies and requesting that independent regulatory agencies such as the Commission ensure, *inter alia*, that their regulations have benefits justifying their costs and impose the least burden possible); Executive Order No. 13,579, *Regulation and Independent Regulatory Agencies*, 76 FR 41587 (July 14, 2011) (requesting that executive agencies, including independent regulatory agencies such as the Commission, retrospectively analyze their regulations and that regulations found to be outmoded, ineffective, insufficient, or excessively burdensome be modified, streamlined, expanded, or repealed); and Executive Order No. 13,211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*, 66 FR 28355 (May 22, 2001) (requiring agencies other than independent regulatory agencies such as the Commission to prepare Statements of Energy Effects describing the effects of certain significant energy actions on energy supply, distribution, or use).

facilities under section 2.55(a), and so compel companies to instead submit more individual certificate applications.

44. We concur with the commentors' characterization of section 2.55: it was put in place to, and continues to, reduce the burden that the industry (and Commission) would otherwise bear if every minor modification to a natural gas facility required case-specific certificate authorization. Further, while the Commission, as an independent agency, is not subject to the requirements of the cited Presidential documents, the Commission has directed staff to perform an internal assessment of the effectiveness of our regulations and is continually seeking to streamline the regulations in order to foster competitive markets, facilitate enhanced competition, and avoid imposing undue burdens on regulated entities or unnecessary costs on those entities or their customers.⁷¹ However, the NOPR, by more fully describing the types of activities that currently come within the bounds of 2.55(a), does not trigger any need for assessment of burdens and benefits, because the NOPR's clarification regarding the scope of section 2.55(a) does not alter any aspect of the status quo. Where the NOPR's proposed new regulations would impose an additional burden (e.g., the landowner notification requirements discussed below), then in accord with applicable Executive Orders, we explain the benefit we anticipate these new regulations will provide and quantify the burden we anticipate compliance will impose.

⁷¹ See, e.g., *Storage Reporting Requirements of Interstate and Intrastate Natural Gas Companies*, Order No. 757, 77 FR 4220 (January 27, 2012), FERC Stats. & Regs. ¶ 31,327, at PP 12-13 (2012).

5. **Section 2.55 Authorization and Part 157, Subpart F, Blanket Authorization**

45. Under our Part 157, Subpart F blanket certificate regulations, as under our section 2.55 regulations, a gas company can construct and operate a limited class of facilities without the need to obtain separate certificate authorizations for each individual facility. INGAA, MidAmerican Energy, and National Fuel point to section 157.202(b)(3) of our blanket certificate regulations, which in designating the types of facilities that may qualify for blanket authorization, states: “‘Facility’ does not include the items described in section 2.55.”⁷² MidAmerican Energy is apprehensive this could be interpreted to mean that if an auxiliary facility does not qualify under section 2.55(a) because it does not meet the right-of-way/work space constraints, then it also could not qualify as an eligible facility under the blanket regulations because of the section 157.202(b)(3) limitation, thereby leaving a company with the “only option” of filing an application for case-specific certificate authorization.⁷³

46. The Commission responded to a similar concern in 1999 in the Order No. 603 proceeding that codified the *Arkla/NorAm* clarification regarding replacement projects under section 2.55(b) by amending that section to add the phrase “will be located in the same right-of-way or on the same site as the facilities being replaced, and will be

⁷² 18 CFR 157.202(b)(3) (2013).

⁷³ MidAmerican Energy’s Comments at p. 11.

constructed using the temporary work space used to construct the original facility.”⁷⁴

The Commission explained that section 157.202(b)(3) only prevents companies from relying on their Part 157 blanket certificates to construct facilities if the facilities qualify under section 2.55. As clarified by Order No. 603’s revision to section 2.55(b), replacement projects are disqualified under that section only if they will use additional right-of-way or work space than was used in constructing the facilities being replaced or will result in an incidental increase in capacity. Thus, section 157.202(b)(3) prevents companies from relying on their Part 157 certificates for replacement projects that will not use additional right-of-way or work space and therefore qualify under section 2.55.⁷⁵

47. Both section 2.55 and the blanket certificate program are intended to provide a streamlined authorization process to avoid the comparatively greater time, cost, and effort that accompany a case-specific section 7 certificate application.⁷⁶ To this end, we expect companies seeking to install, maintain, replace, repair, or upgrade facilities to look first to section 2.55, and only if an activity is beyond the scope of that section then to turn to blanket certificate authority, and only if an activity would exceed blanket authority, then to file for case-specific section 7 authorization.

⁷⁴ Order No. 603, 64 FR 26572, FERC Stats. & Regs. ¶ 31,073.

⁷⁵ Order No. 603, 64 FR 26572 at 26580, FERC Stats. & Regs. ¶ 31,073.

⁷⁶ While section 2.55 covers a more limited range of facilities than the blanket program, it offers lighter-handed regulatory oversight than the blanket program.

48. INGAA and National Fuel note we modified section 157.202(b)(2)(i) to specify that replacements which do not meet section 2.55(b) requirements may be eligible for blanket authorization⁷⁷ and request we do the same for auxiliary installations. We will do so (although we believe this does not change the way the regulations currently function) to ensure clarity and consistency in the application of the regulations.⁷⁸ Accordingly, to explicitly (and redundantly) specify that auxiliary installations which do not meet section 2.55(a) requirements may be eligible for blanket authorization, we will add the following sentence at the end of section 157.202(b)(2)(i): “Eligible facility includes auxiliary installations and observation wells which do not qualify under § 2.55(a) of this

⁷⁷ Order No. 603 revised 157.202(b)(2)(i) to specify that eligible facilities include “replacements that do not qualify under section 2.55(b) of this chapter because they will have an impact on mainline capacity.” Order No. 603, 64 FR 26572 at 26579-80, FERC Stats. & Regs. ¶ 31,073.

⁷⁸ We note that in instances where a pipeline company needs to rely on its Part 157 certificate to construct auxiliary or replacement facilities because they do not satisfy the location or work space limitations of section 2.55, the Part 157 blanket certificate regulations impose no limitations on the placement of the facilities. While the Commission has indicated previously that it is contemplated that replacement facilities constructed under blanket authority would usually be located adjacent to, if not within, an existing right-of-way, sections 157.202(b)(2)(i) and 157.210 permit the construction of non-main line facilities and main line facilities, respectively, without restriction on their location. For example, a company can rely on its Part 157 blanket certificate to replace the capacity of a segment of obsolete pipeline with new pipeline that may need to be located at considerable distance from the old pipeline in order to avoid a housing development constructed since the old pipeline was installed or to install auxiliary facilities such as anodes offset from the existing right-of-way to provide cathodic protection.

chapter because they will not satisfy the location or work space requirements of § 2.55(a).”⁷⁹

6. **“Grandfathering” Existing Section 2.55(a) Installations**

49. For the reasons discussed above, we believe modifying section 2.55(a) to codify right-of-way and work space constraints does no more than restate existing Commission policy and practice. Nevertheless, we acknowledge that although these constraints have been clear to the Commission, they may have been subject to misinterpretation by the industry.

50. The commentors declare companies have relied on section 2.55(a) to install facilities that are not in compliance with right-of-way and work space requirements. As explained above, any such installations are NGA-jurisdictional facilities constructed and operated without NGA authority. However, given that section 2.55(a) did not previously

⁷⁹ In 1999, the Commission proposed adding the following sentence at the end of section 157.202(b)(2)(i): “Eligible facility includes observation wells.” *Landowner Notification, Expanded Categorical Exclusions, and Other Environmental Filing Requirements*, Notice of Proposed Rulemaking, 64 FR 27717 (May 21, 1999), FERC Stats. & Regs. ¶ 32,540 (1999). Ultimately, the Commission elected not to include the sentence based on its conclusion at the time that observation wells could be constructed under section 2.55(a). *Landowner Notification, Expanded Categorical Exclusions, and Other Environmental Filing Requirements*, 64 FR 57374 (October 25, 1999), FERC Stats. & Regs. ¶ 31,082, at 30,959 (1999). Commentors in this proceeding have pointed out that many observation wells, rather than being drilled to monitor operations at an existing gas storage facility, are drilled in order to determine whether a planned new storage facility is feasible, in which case a company may not have any existing right-of-way and would not be able to meet section 2.55(a) requirements. In view of this, we will include observation wells in revised section 157.202(b)(2)(i) to ensure that if such wells are not able to meet section 2.55(a) siting restrictions, they will then be eligible to be considered for authorization under the blanket certificate program.

include an explicit description of the inherent right-of-way/work space constraint, and in view of commentors' claims of companies' good faith reliance on section 2.55(a) to install facilities which violate this constraint, we will not require the companies to obtain a blanket or case-specific certificate authorization for the facilities purportedly installed pursuant to section 2.55(a) prior to the effective date of this rule, provided such facilities comply with all other applicable federal, state, and local rules and regulations. That said, if we become aware of facilities installed relying on section 2.55(a) that do not meet the constraints of that section which are the cause of any significant adverse environmental impact, we may then require that such facilities obtain blanket or case-specific certificate authorization.

7. **Burden of Section 2.55's Right-of-Way Requirement**

51. INGAA argues that we erred by not including the "additional time and burden" of blanket or case-specific section 7 procedures that will now be necessary for facilities that cannot meet section 2.55(a) siting requirements.⁸⁰ This objection presumes the section 2.55(a) right-of-way/work space constraint constitutes a new burden imposed by this rule. As previously discussed, this is not the case, because section 2.55 activities have always been restricted to an authorized right-of-way or facility site and prescribed work spaces. Activities that exceed these limits are not covered under section 2.55, and thus no additional time and burden is being imposed – they remain subject to the same time and

⁸⁰ INGAA's March 2013 Comments at p. 5.

burden that they were before. Consequently, we do not include activities that did not and will not qualify under section 2.55(a) in our estimate of the additional time and burden imposed by this rule.

52. INGAA asserts the “NOPR would convert all auxiliary installations outside of existing rights of way and historical work spaces into Natural Gas Act jurisdictional facility construction that would require certificate authorization and formal agency consultation.”⁸¹ We concur, but as noted, we will not compel companies to seek blanket or case-specific authorization for facilities installed in erroneous reliance on section 2.55(a) unless we find reason to suspect such facilities are a cause of significant adverse environmental impact. Where facilities already in place present no such issues, we find no reason to subject them to further review.

53. In any event, the NOPR and this Final Rule do no more than clarify the source of our authority over certain types of facilities. Therefore, we reject INGAA’s claim that we include an estimate of the burden on companies of filing certificate applications and consulting with environmental agencies for facilities allegedly ‘converted’ to blanket or case-specific status.

B. Landowner Notification

54. This Final Rule adopts regulations to provide for advance landowner notification for auxiliary and replacement projects under section 2.55 and for maintenance activities

⁸¹ INGAA’s March 2013 Comments at p. 22.

under section 380.15. As previously discussed, we consider it appropriate to give landowners prior notice to the extent practicable before intruding onto their property as a courtesy and to avoid potential conflict between landowners and gas companies.

Commentors do not dispute the virtues of informing landowners of company activities, but insist the notice procedures described in the NOPR are impractical.

55. In response to commentors' concerns, we will revise the proposed notification obligations to (1) specify the types of maintenance activities that merit individual notice; (2) limit notice to landowners whose property is crossed or used for section 2.55 and section 380.15 activities; and (3) reduce the prior notice period from 10 days to five days. These modifications should significantly diminish the burden of complying with the new requirements for prior notice to landowners.

56. Instead of mandating notice to landowners for all section 380.15 maintenance activities, as proposed in the NOPR, we will only require prior notice of those more substantial activities that will result in ground disturbance. In addition, we are reducing the scope of notification proposed in the NOPR, which would have required that notice be provided not only to directly affected landowners, but also to adjacent landowners and to landowners with a residence within 50 feet of a proposed work area.⁸² Commentors

⁸² The NOPR defined "affected landowners" for purposes of companies' activities under sections 2.55 and 380.15 as "owners of property interests, as noted in the most recent tax notice, whose property (1) is directly affected (i.e., crossed or used) by the proposed activity, including all rights-of-way, facility sites, access roads, pipe and contractor yards, and temporary work space; or (2) abuts either side of an existing right-of-way or facility site, or abuts the edge of a proposed right-of-way or facility site which

(continued...)

assert this is overly broad and request that we remove abutting landowners and landowners with a residence within 50 feet of the proposed work area from the definition of “affected landowners.” Although the NOPR would have required the same scope of notice that companies are required to provide for projects under the Part 157 blanket certificate regulations, the commentors have convinced us that more limited landowner notification requirements are appropriate for companies’ activities under section 2.55 and 380.15, since such projects are likely to be smaller, take a shorter period of time to accomplish, and be less disruptive than blanket certificate projects.

57. Finally, while the NOPR stipulated a 10-day prior notice, we accept commentors’ claim that some activities, particularly unanticipated maintenance, are not scheduled far enough in advance to allow for a 10-day prior notice.⁸³ In view of this, we will only require that landowners receive notice five days in advance of initiating certain activity under section 2.55 or 380.15, which we anticipate will still allow time for landowners and a company to discuss any concerns landowners may have regarding companies’ planned activities.

runs along a property line in the area in which the facilities would be constructed, or contains a residence within 50 feet of the proposed construction work area.” 78 FR at 683, NOPR, FERC Stats. & Regs. ¶ 32,696 at P 30 (cross-referenced at 141 FERC ¶ 61,228).

⁸³ Additionally, commentors state that the 10-day prior notice period prevents companies from adjusting maintenance schedules due to weather, equipment availability, permitting processes, etc.

1. Jurisdictional Basis and Need for Landowner Notification

58. INGAA asserts that the Commission has no jurisdictional basis to impose landowner notification requirements for companies' installations of auxiliary facilities and replacement projects under section 2.55 or their maintenance activities under section 380.15;⁸⁴ therefore, INGAA argues that the NOPR's proposed landowner notification requirements for these activities should not be adopted. However, if the Final Rule does adopt landowner notification requirements, INGAA asks the Commission to explain what circumstances changed since the promulgation of Order No. 609⁸⁵ to merit mandatory prior notification to landowners before a company commences construction under section 2.55 or maintenance under section 380.15.

⁸⁴ INGAA's March 2013 Comments at p. 7. INGAA cites to *Californians for Renewable Energy, Inc.*, 133 FERC ¶ 61,194, at P 26 (2010), to support its statement that "[t]hus far, the Commission properly has refrained from exercising jurisdiction over easement or right-of-way agreements, and has appropriately deferred the formal resolution of disputes in such matters to the courts." We agree that formal resolution of disputes over the terms of easements and right-of-way agreements belong in the courts and we are not claiming jurisdiction over these matters by imposing landowner notification requirements for Commission-authorized activities.

⁸⁵ Order No. 609, 64 FR 57374 (October 25, 1999), FERC Stats. & Regs. ¶ 31,082 (1999).

59. INGAA points out⁸⁶ that in Order No. 609 the Commission determined that there was no need for landowner notification because section 2.55(b) replacements occur within an “existing right-of-way and subject to an existing easement agreement, which dictates the pipeline’s right to obtain access to maintain the facilities.”⁸⁷ However, Order No. 609 also stated that “prudence would dictate that the pipeline should give the landowner as much advance warning as possible to avoid misunderstandings and ill-will.”⁸⁸

60. Our proposal in the NOPR in this proceeding to adopt landowner notification requirements for companies’ activities under section 2.55 and section 380.15 was prompted by landowners’ expressions of concern to Commission staff during phone inquiries, scoping meetings, and in other forums due to companies’ personnel appearing unannounced on or near their property. The types of concerns expressed by landowners arise from construction and maintenance crews arriving unexpectedly to engage in activities that disrupt, or could disrupt, landowners use of their property, or damage their property as a result of replacing facilities; re-grading or replacing access roads; lowering

⁸⁶ INGAA’s March 2013 Comments at pp. 6-7. INGAA also notes that “[a] pipeline must own the property or have an easement to perform maintenance, and the same is true for a pipeline to install, modify, replace, improve, alter, operate, maintain, access, inspect, patrol, protect, abandon, etc. auxiliary installations and replacement facilities.” *Id.* at p. 12.

⁸⁷ Order No. 609, 64 FR 57374 at 57382, FERC Stats. & Regs. ¶ 31,082.

⁸⁸ *Id.*

pipelines; performing anomaly digs; or preventing and controlling erosion. We view providing prior notice, which some companies avow is routine practice, as the least burdensome and most practical way to ensure courtesy and preclude conflicts with landowners. Whenever a company conducts an activity subject to our jurisdiction and under authority provided by our regulations,⁸⁹ we have a right and responsibility to impose appropriate and reasonable conditions on that activity.⁹⁰ Our responsibility includes ensuring that, to the extent practicable, landowners are informed in advance

⁸⁹ In addition, section 157.14(a)(9)(iv) of the Commission's regulations requires an applicant for NGA section 7 certificate authority to certify that it will "maintain the facilities for which a certificate is requested in accordance with Federal safety standards." 18 CFR 157.14(a)(9)(iv) (2013). Likewise, NGA section 7(h) gives the certificate holder eminent domain authority to acquire rights necessary to "construct, operate, and maintain a pipe line." 15 U.S.C. 717f(h) (2012). *See Brian Hamilton*, 141 FERC ¶ 61,229, at PP 24-25 (2012) (*Hamilton*). Therefore, the Commission has jurisdiction over maintenance activities, and has the authority to require landowner notice as a condition of a company's jurisdictional maintenance activities.

⁹⁰ Contrary to National Fuel's assertion (*see* National Fuel's Comments at p. 2), the Commission is not restricted to requiring landowner notification only for companies' activities under their Part 157 blanket and case-specific certificates. As discussed *supra* PP 13-16 auxiliary and replacement facilities are NGA-jurisdictional facilities that can be constructed only with the requisite section 7 certificate authority, which the Commission provided when it adopted section 2.55 as a precursor to the Part 157 blanket certificate construction program. Further, the authorization to perform maintenance on gas facilities comes from the certificate authority under which the facilities were or will be constructed – whether it be self-implementing section 2.55 certificate authority, Part 157 blanket certificate authority, or case-specific certificate authority. As the Commission explained in *Hamilton*, 141 FERC ¶ 61,229, at P 24, "[i]t does not necessarily follow, however, that [a natural gas company] has no responsibilities merely because the activity neither falls within the replacement of facilities under section 2.55(b) nor under the blanket construction provisions. When the Commission authorizes a natural gas company to construct and operate pipeline facilities, the authority must necessarily include authority to maintain the pipeline."

when they may be inconvenienced or the use of their property may be disrupted by companies' jurisdictional activities to construct auxiliary and replacement facilities under section 2.55 authority or conduct maintenance activities subject to section 380.15.

Landowners deserve an opportunity to express concerns, and we want the opportunity to act on those concerns if necessary. ⁹¹

61. Commentors assert that easement agreements are the proper method for landowners to establish any requirements for prior notice of company activities on private property,⁹² and note that many of these agreements specify that no notice is required for maintenance activities. While we recognize that some landowners agree to forego prior notice, we nevertheless believe it is prudent for gas companies to provide such notice. Landowners may misunderstand the terms of an easement agreement or a subsequent owner may not be aware that the land is subject to an easement. Therefore, regardless of whether an easement agreement gives a company a right enforceable under state property

⁹¹ National Fuel argues that the NOPR relied on NEPA as a basis for requiring landowner notification for maintenance activities. National Fuel's Comments at p. 3. It did not. The rationale for requiring notification is our belief that landowners should be informed in advance of any activity that will take place on their property as a consequence of our granting a company an NGA section 7(c) certificate. The jurisdictional basis for this requirement is as a condition to the certificate, which we impose to ensure company actions are consistent with the public interest. The NOPR, however, did rely on NEPA as a basis for restricting companies' activities to areas subject to an environmental review, and as a result thereof, authorized for a particular use.

⁹² See INGAA's March 2013 Comments at pp. 6 and 12, Southern Star's Comments at p. 6, Golden Triangle's Comments at p. 4, WBI Energy's Comments at p. 7, and National Fuel's Comments at pp. 2-3.

law to enter on property without notice, we believe it is appropriate and reasonable for our regulations to require that to the extent practicable companies provide landowners with prior notice before commencing certain activities under section 2.55 or section 380.15.

2. Exceptions to Landowner Notification Requirements

62. Commentors state that if the landowner notification proposals are adopted, the Final Rule should waive landowner notification to provide “for immediate access to emergency gas leaks, acts of God, investigations related to gas pressure or flow or SCADA signals, or to respond to One Call notifications on an emergency or routine basis.”⁹³

63. Our regulations provide for a company to take immediate action in an emergency, as we pointed out in response to a similar concern regarding the imposition of a 30-day prior notice:

[This] rule does not override other Commission regulations which permit interstate pipelines to take prompt corrective actions to address conditions that constitute a safety hazard. Subpart I of Part 284 of the Commission's regulations exempts emergency situations from the provisions of section 7 of the Natural Gas Act and permits a pipeline to take immediate action to alleviate an emergency situation subject to a *subsequent* 48-hour reporting requirement. Section 284.262(a)(1)(iii) of Subpart I defines emergency as “Any situation in which . . . immediate action is required or is reasonably

⁹³ INGAA’s March 2013 Comments at p. 9 and National Fuel’s Comments at p. 5.

anticipated to be required for the protection of life or health or for maintenance of physical property.”⁹⁴

Notwithstanding the foregoing, to assure there will be no hesitation by gas companies if immediate action is called for, we will specify in sections 2.55 and 380.15 that: “For an activity required to respond to an emergency, the five-day prior notice period does not apply.” Note that events that do not necessitate immediate access to system facilities would not trigger our section 284 emergency provisions, and therefore would still be subject to a five-day prior notice.

3. Part 157 Landowner Notification Exemption for Replacement Projects

64. Companies are required to provide landowner notice prior to initiating projects under the Part 157 blanket certificate regulations.⁹⁵ However, section 157.203(d)(3)(i) of the regulations provides a notice exemption for replacement projects that would have been done under section 2.55(b), but for the fact that the replacement projects are not of the same capacity.⁹⁶ To provide consistency with new the section 2.55 landowner

⁹⁴ *Interim Revisions to Regulations Governing Construction of Facilities Pursuant to NGPA Section 311 and Replacement of Facilities*, 52 FERC ¶ 61,252, at 61,877 (1990). See also section 157.203(d)(3)(i), which states that “no landowner notice is required” for any blanket program “replacement done for safety, DOT compliance, environmental, or unplanned maintenance reasons that are not foreseen and that require immediate attention by the certificate holder.”

⁹⁵ 18 CFR 157.203(d)(1) (2013).

⁹⁶ 18 CFR 157.203(d)(3)(i) (2013). To qualify under section 2.55(b) a replacement project must have a substantially equivalent designed delivery capacity as the original facility. 18 CFR 2.55(b)(1)(ii) (2013).

notification requirements established in this Final Rule, we will amend section 157.203(d)(3)(i) to provide that replacement projects that would have been done under section 2.55(b), but for the fact that the project alters the designed delivery capacity of the original facility, remains exempt from the landowner notification requirements of Part 157, as long as the project does not involve ground disturbance. Because the revised section 2.55(b) notice requirements require landowner notice for a ground disturbing replacement project that substitutes in a new same-size facility, it would be inconsistent to retain the landowner notice exemption in section 157.203(d)(3)(i) for a ground disturbing replacement project that alters the capacity of the original facility.

4. Requirement that Notification Inform Landowners of the Availability of the Commission's Dispute Resolution Division

65. WBI Energy states that any landowner notification requirements should not include a requirement that companies provide landowners with contact information or include a description of the Commission's Dispute Resolution Division (DRD) Helpline. WBI Energy asserts disputes concerning easements and right-of-ways for existing facilities are properly adjudicated in state courts, and not by the Commission. WBI Energy further argues that including information regarding the DRD in the notice likely would cause landowners to incorrectly believe that the Commission is the appropriate venue for resolving property disputes.⁹⁷

⁹⁷ WBI Energy's Comments at pp. 8-9.

66. We recognize that the DRD Helpline is not the appropriate venue for determining the respective rights of companies and landowners under state property law or for renegotiating the terms of easement agreements. However, there are instances in which it is appropriate and/or potentially helpful for landowners to contact Commission staff to seek informal resolution of a dispute. For example, while a court would be the appropriate forum to adjudicate a dispute regarding whether an easement agreement gives a natural gas company the right to allow another company to lay a fiber optic cable in the pipeline right-of-way, or to determine the amount of monetary damages caused to a landowner's property by a company's negligence during construction activities, it is appropriate for a landowner to contact the Commission if the landowner believes that a company's planned activities might not comply with the provisions of section 2.55 (e.g., may not be confined to the existing right-of-way) or section 380.15 and for the Commission's staff to contact the company regarding the matter. It also is appropriate for a landowner to seek the Commission's assistance in obtaining a company's voluntary agreement to reasonable accommodation requested by the landowner (e.g., to reschedule backhoe digging planned by the company for the same day as a back-yard wedding reception). In this regard, we emphasize that section 380.15(b), *Landowner consideration*, states that "[t]he desires of landowners should be taken into account in the planning, locating, clearing, and maintenance of rights-of-way and the construction of facilities on their property."

67. While only a court can determine the respective rights of a company and landowner under the terms of an easement agreement, the terms of an easement in no way

diminish the Commission's NGA authority over companies' activities to construct or maintain jurisdictional facilities. Thus, we are adopting our proposal to require that companies include the DRD Helpline number to facilitate landowners being able to contact and seek assistance from Commission staff. We encourage companies to describe the DRD Helpline as a way for landowners to inform the Commission of concerns regarding a company's planned activities. We anticipate companies, in providing the DRD Helpline number, will be able to explain this without implying, as WBI Energy worries, that a company is acting unlawfully.⁹⁸

5. Landowner Notification for Maintenance Activities

68. Commentors state that the Commission's proposed prior notice requirements for maintenance activities may be unnecessary in view of existing U.S. Department of Transportation (DOT) regulations. DOT's Pipeline and Hazardous Materials Safety Administration (PHMSA) requires pipelines to develop a continuing public education program,⁹⁹ which follows guidance provided by the American Petroleum Institute's (API)

⁹⁸ *Id.* In Order No. 609, in response to similar apprehensions regarding a requirement for companies to include information in landowner notices on how to contact the Commission's Enforcement Hotline, we stated we did not believe "that including a reference to the Enforcement Hotline implies the company is doing something unlawful," and added that we expected companies "will be able to present it as merely being a means to contact the Commission, which is in fact what it is." 64 FR 57374, 57384.

⁹⁹ *See* 49 CFR 192.616 (2013).

Recommended Practice 1162.¹⁰⁰ API's Recommended Practice 1162 requires that "[w]hen planning pipeline maintenance-related construction activities," gas companies "should communicate to the audience affected by the specific activity in a timely manner appropriate to the nature and extent of activity,"¹⁰¹ and must also notify landowners in writing biennially of all "planned major maintenance/construction activity."¹⁰²

69. We accept that the PHMSA requirements will be sufficient to alert landowners to many maintenance activities. We will therefore modify the prior notice requirement for section 380.15 maintenance activities proposed in the NOPR in this proceeding by limiting notice to maintenance activities that will cause ground disturbance.¹⁰³ Given the potential disruption and impact level of maintenance activities that will cause ground disturbance, we find such activities merit separate written notice to affected landowners.

70. While some of these activities will be included in the PHMSA-mandated biennial report distributed to landowners, we have no assurance that all such activities will be.

¹⁰⁰ See

<http://mycommittees.api.org/standards/pipeline/1162%20Links/1162nonprintable.pdf>.

¹⁰¹ See

<http://mycommittees.api.org/standards/pipeline/1162%20Links/1162nonprintable.pdf>, sections 4.10 and C.10.

¹⁰² *Id.* See Table 2-1, *Summary of Public Awareness Communications for Hazardous Liquids and Natural Gas Transmission Pipeline Operators*.

¹⁰³ However, if in the future, we receive objections indicating that landowners are not adequately informed of particular maintenance activities, we may consider applying a separate prior notice requirement specific to such activities.

Further, while the PHMSA report of planned major maintenance can provide a broad overview of a company's future operations, because the company only issues this report every other year, it does not give landowners a sufficiently precise description of when a particular activity will commence and conclude. We believe that if landowners have notice five days before a ground disturbing project begins, this will enable companies and landowners time to confer, coordinate, and avoid simultaneously undertaking incompatible actions. Finally, we note that PHMSA is focused on the safe operation of existing facilities, whereas the Commission purview of the public interest covers a broader set of concerns. Thus, while PHMSA may find no cause to take into account a company's activity that inconveniences a landowner but does not compromise the safe operation of gas facilities, the Commission may find such an activity to be within the scope of its authority to ensure the activity is consistent with the public convenience and necessity.

71. MidAmerican Energy and Golden Triangle request that the Commission provide a definition of maintenance under section 380.15 of the regulations.¹⁰⁴ Golden Triangle states that any time its personnel enter the right-of-way for periodic routine activities (e.g., pipe-to-soil readings, leak patrols, surveillance patrols, meter station inspections,

¹⁰⁴ MidAmerican Energy's Comments at p. 5 and Golden Triangle's Comments at p. 9.

and walking the pipeline right-of-way), a landowner will construe that entrance as a maintenance activity.¹⁰⁵

72. We see no need to craft a definition describing all maintenance activities, although we can say that we do not share Golden Triangle's apparent view that an intrusion by company personnel onto a landowner's property for monitoring purposes is not "maintenance" so long as the monitoring does not lead to any additional activity during the same intrusion. We consider *all* of the activities identified by Golden Triangle to be maintenance. However, as stated above, we are scaling back the NOPR's proposal so that prior notice to landowners will only be required for ground disturbing maintenance activities. Thus, while we believe Golden Triangle's examples are maintenance activities, as long as these minor activities do not cause ground disturbance, they will not trigger any Commission requirement for advance notice to landowners.

6. Burden Resulting from Notification Requirement

73. Commentors argue that the NOPR did not fully analyze the expense and burden associated with requiring landowner notification for auxiliary, replacement, and maintenance activities.¹⁰⁶ INGAA stresses that maintenance alone entails hundreds of thousands of property visits per year, and that to track these activities company personnel would have to write descriptions of each activity, visit the site to determine if new

¹⁰⁵ Golden Triangle's Comments at pp. 9-10.

¹⁰⁶ INGAA's March 2013 Comments at pp. 21-25, Southern Star's Comments at p. 5-6, and National Fuel's Comments at p. 2.

residences were installed since the last patrol, hire a land agent to identify all affected and abutting landowners, and craft and mail formal letters.¹⁰⁷

74. Golden Triangle asserts that the expense of complying with the proposed landowner notification requirements will have a significant impact on small entities.¹⁰⁸

Golden Triangle states that compliance with the landowner notification requirements will include increased costs to hire either a contractor or full-time employee, to create a database or purchase specialty software, and to mail out letters to all of its right-of-way easement holders.¹⁰⁹

75. WBI Energy and National Fuel argue that the Commission underestimated the amount of time it will take companies to prepare the notices.¹¹⁰ WBI Energy and INGAA state that the NOPR's estimate that there will be three times as many maintenance projects as section 2.55 projects is a gross underestimation.¹¹¹ National Fuel insists that the NOPR's estimate that the entire industry will spend 39,000 hours to satisfy

¹⁰⁷ INGAA's March 2013 Comments at p. 10.

¹⁰⁸ Golden Triangle claims it is a small entity, which the Small Business Administration (SBA) Office of Size Standards defines a natural gas company transporting natural gas as small if its annual receipts are less than \$25.5 million. *See* 13 CFR § 121.201 (2013), Subsector 486 and SBA's Table of Small Business Size Standards, effective March 26, 2012, *available at*: http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.

¹⁰⁹ Golden Triangle's Comments at pp. 7-8.

¹¹⁰ WBI Energy's Comments at p. 11 and National Fuel's Comments at p. 4.

¹¹¹ WBI Energy's Comments at p. 11.

the notification requirement is low. National Fuel predicts that it will be required to spend approximately six hours to prepare and deliver notices to all affected landowners for each maintenance activity.¹¹² Golden Triangle asserts it will spend at least 16 hours on 250 letters for mowing or noxious weed control, in addition to the eight hours it estimates will be required to research, update, and prepare separate letters for abutting landowners.¹¹³ In addition, MidAmerican Energy states that the landowner notification requirement will impose varying burdens on individual pipelines based on the activity undertaken. For example, it estimates that farm tap installation and maintenance will require 5,400 letters per year; check, operate, and lubricate maintenance will require 30,000 letters per year; and leak detection surveys will require 7,700 letters per year.¹¹⁴

76. We acknowledge that given the wide range of maintenance activities described by commentors, we may have underestimated the burden of providing prior notice to landowners that would have resulted from the NOPR's proposal to require that companies notify landowners, including abutting landowners, prior to commencing any activities under section 2.55 or section 380.15. However, as discussed above, we are limiting the requirement for prior notice to activities that will involve ground disturbance.

¹¹² National Fuel's Comments at pp. 4-5.

¹¹³ Golden Triangle's Comments at p. 9.

¹¹⁴ For maintenance activities on their systems, WBI Energy estimated it would have to send 19,500 letters, Northern Natural estimated 45,000 letters, and National Fuel estimated 220,000 letters.

In addition, we are eliminating the proposed requirement that companies give prior notice to abutting landowners and to landowners with a residence within 50 feet of a proposed work area.

77. We believe these modifications to the NOPR's proposed notice requirements will alleviate the concerns for the majority of the activities cited by commentors. As a result, we will use a multiplier of two times the number of all regulated companies' estimated annual auxiliary installations under section 2.55(a)¹¹⁵ as a reasonable estimate of the total annual number of auxiliary installations, replacement projects, and maintenance activities that will require prior notice to landowners because the activities will result in ground disturbance. We acknowledge that basing the estimated total number of activities requiring prior notice on regulated companies' estimates of the number of section 2.55(a) auxiliary installations undertaken annually is not going to yield the same number as basing our estimate on on-site surveys or other verifiable data; nevertheless, we believe our estimate is reasonable and is as accurate an estimate as can be readily established for purposes of calculating the anticipated burden.

78. As discussed herein, we are also responding to companies' concerns that it is often impractical to notify landowners at least 10 days prior to the start of any section 2.55 or section 380.15 activity, as the NOPR's proposal would have required. By requiring that notice be received five days and not 10 days prior to undertaking any activity, and

¹¹⁵ Based on a survey of nine jurisdictional companies, we estimate that approximately 7,605 auxiliary installation projects occur each year.

limiting notice to only ground disturbing rather than all section 2.55 and section 380.15 activities, we believe companies will be subject to the minimal inconvenience necessary to ensure that landowners receive adequate advance notice of activities on their property that could adversely affect them.

79. Further, while Golden Triangle indicates that compliance with the landowner notification requirements may require companies to create a database or purchase specialty software, we do not believe it is unreasonable or burdensome if the new notice requirements necessitate that some companies update their databases. All gas companies (regardless of size) need to know, both to enhance, replace, and maintain their facilities and to be able to respond to emergencies, precisely where their rights-of-way lie, how to get to their facilities, and how to contact the owners of the properties their facilities sit upon.¹¹⁶ The new notice requirements require companies to do little more than access this existing information and update it as needed.¹¹⁷ Preparation of a notice using

¹¹⁶ Companies should already have such information on file, given that gas facilities generally were constructed under case-specific certificates obtained in proceedings in which the companies were required to give affected landowners notice in accordance with section 157.6(d), or were constructed under the blanket certificate regulations which require in section 157.203(d) that companies give landowners notice of all projects subject to those regulations' prior notice provisions. In addition, companies need to periodically update such information to be able to comply with the PHMSA biennial reporting requirement. Further, since some of the major maintenance projects included in the PHMSA report will also qualify for prior notice under our new regulations, companies should be able to use the same project description to satisfy both PHMSA and Commission requirements.

¹¹⁷ Golden Triangle argues that it does not have a database of its easement holders. Golden Triangle's Comments at pp. 7-8. We expect gas companies to have documented

(continued...)

information a company already needs to have on hand should not be burdensome or delay the commencement or progress of activities under section 2.55 or section 380.15.

III. Information Collection Statement

80. The Paperwork Reduction Act (PRA)¹¹⁸ requires each federal agency to seek and obtain Office of Management and Budget (OMB) approval before undertaking a collection of information directed to ten or more persons or contained in a rule of general applicability.¹¹⁹ The OMB's regulations implementing the PRA require approval of certain information collection requirements imposed by agency rules.¹²⁰ Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of an agency rule will not be penalized for failing to respond to the collection of information unless the collection of information displays a valid OMB control number.

the metes and bounds, terms of, and parties to all existing easements. While we recognize that this is not a static data set, we expect companies to conduct systematic reviews to keep this information current. We note Golden Triangle acknowledges, as discussed above, that its personnel need to enter its rights-of-way for periodic routine activities including pipe-to-soil readings, leak patrols, surveillance patrols, meter station inspections, and walking the pipeline right-of-way. Golden Triangle's Comments at pp. 9-10. If Golden Triangle does not have a database that identifies the precise location of and owners of the properties on which it has its rights-of-way, it should.

¹¹⁸ 44 U.S.C. 3501-3520 (2012).

¹¹⁹ OMB's regulations at 5 CFR 1320.3(c)(4)(i) (2013) require that "[a]ny recordkeeping, reporting, or disclosure requirement contained in a rule of general applicability is deemed to involve ten or more persons."

¹²⁰ 5 CFR 1320 (2013).

81. The Commission is submitting the revised reporting requirements to OMB for its review and approval. The only entities affected by this rule would be natural gas companies under the Commission's jurisdiction. The information collection requirements in this Final Rule are identified as follows.

82. FERC-577, "Gas Pipeline Certificates: Environmental Impact Statements," identifies the Commission's information collections relating to the requirements set forth in NEPA and Parts 2, 157, 284, and 380 of the Commission's regulations. Applicants have to conduct appropriate studies which are necessary to determine the impact of the construction and operation of proposed jurisdictional facilities on human and natural resources, and the measures which may be necessary to protect the values of the affected area. These information collection requirements are mandatory.

83. Because this Final Rule adds a landowner notification requirement for certain activities undertaken pursuant to sections 2.55, 157, and 380.15 of our regulations, the overall burden on the industry will increase. However, because natural gas companies subject to our jurisdiction must already notify landowners in conjunction with NGA sections 3 projects and 7 case-specific applications and when conducting activities under Part 157 of our regulations, no new technology will be needed and no start-up costs will be incurred. Further, even without the new notification requirement, it is standard practice for some companies to inform landowners prior to coming onto their property, both as a courtesy and to avoid potential conflicts in landowner and company activities. Thus, the notification is expected to be consistent with current industry practices for some companies, and consequently to impose little additional burden on those companies.

84. We are making some minor modifications to the numbers used to derive our estimate. Because, as revised by this Final Rule, the prior notice requirement will only apply to those activities that require ground disturbance (and not to all section 2.55 and section 380.15 activities, as was proposed in the NOPR) and will only require notice to landowners whose property will be crossed or used (and not to abutting landowners and landowners with a residence within 50 feet of the proposed work area, as the NOPR would have required), we believe the revised estimated burden can no longer be characterized as underestimated. The vast majority of activities that commentors identified (principally maintenance, such as mowing, noxious weed control, and equipment inspection and lubrication) will not be subject to our revised notification requirements. As a result, we are decreasing our estimate of the burden to notify landowners for maintenance activities, as described above in section 6: *Burden Resulting from Notification Requirement*.¹²¹ In the NOPR, Commission staff requested a small representative sample of nine regulated natural gas companies to estimate the number of section 2.55(a) activities conducted each year. One company provided a response too late to be included in the NOPR estimate. Factoring in this company's data results in only a trivial change to the burden estimate in this Final Rule.

85. We are also including the burden associated with the change to section 157.203(d)(3) which was not included in the NOPR estimates. As discussed above, to

¹²¹ *Supra* PP 73-79.

ensure that the landowner notification requirements in sections 2.55(b) and 157.203(d)(3)(i) are equivalent, we are revising section 157.203(d)(3)(i) to require notice for ground disturbing replacement projects that would have qualified under section 2.55 but for the fact that replacement facilities are not of the same capacity and because of that fact are installed under the blanket certificate provisions. As a conservative estimate of the number of such capacity altering replacement projects, we assume that the same number of replacements take place under the Part 157, Subpart F, blanket regulations as under section 2.55(b). This is reflected in the table below. We estimate the additional paperwork burden that this Final Rule would impose in the table below.

Regulation Section for New Landowner Notification Requirements	Annual Number of Respondents (A)	Annual Number of Filings Per Respondent¹²² (B)	Number of Hours per Filing (C)	Total Annual Hours (A)x(B)x(C)
18 CFR § 2.55(a)	165	46	2	15,180
18 CFR § 2.55(b)	165	3	2	990
18 CFR § 157.203(d)(3)	165	3	2	990
18 CFR § 380.15	165	92	2	30,360
Total Annual Burden Hours				47,520

¹²² This column reflects a rounded estimate for each jurisdictional natural gas company, averaged over all of the existing 165 such companies.

86. Given that some companies currently voluntarily comply with the new notification requirements, we believe that the actual industry-wide increase in burden is likely to be less than what we have estimated here.

Information Collection Costs: The Commission projects the average cost for all respondents to be as follows:¹²³

- \$2,898,720 per year for all regulated entities;
- \$17,568 per year for each regulated entity.

Title: FERC-577.

Action: Revision.

OMB Control Nos.: 1902-0128.

Respondents: Natural gas pipeline companies.

Frequency of Responses: On occasion.

Necessity of Information: The requirement to notify landowners is necessary for the Commission to carry out its NGA responsibilities and meet the Commission's objectives of addressing landowner concerns fairly. The information provided to landowners is intended to accommodate, to the extent possible, any concerns they may have regarding a

¹²³ The cost figures are derived by multiplying the total hours to prepare a response by an hourly wage estimate of \$61 (based on average civil engineer wages and benefit information obtained from the Bureau of Labor Statistics' data at http://bls.gov/oes/current/naics4_221200.htm#17-0000 and <http://www.bls.gov/news.release/ecec.nr0.htm>).

natural gas company's planning, locating, clearing, right-of-way maintenance, and facility construction or replacement activities on their property.

Internal Review: The Commission has reviewed the revisions and has determined that they are necessary. These requirements conform to the Commission's need for efficient information collection, communication, and management within the energy industry.

The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information collection requirements.

87. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 (Attention: Information Clearance Officer, Office of the Executive Director), by phone 202-502-8663, or by e-mail to DataClearance@ferc.gov. Comments on the requirements may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission]. For security reasons, comments should be sent by e-mail to OMB at oir_submission@omb.eop.gov. Please reference OMB Control No. 1902-0128, FERC-577, and Docket No. RM12-11 in your submission.

IV. Environmental Analysis

88. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.¹²⁴ The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.¹²⁵ Generally, the actions proposed to be taken here fall within the categorical exclusions in the Commission's regulations that are clarifying, corrective, or procedural and for information gathering, analysis, and dissemination.¹²⁶ Accordingly, an environmental review is not necessary and has not been prepared in connection with this rulemaking .

V. Regulatory Flexibility Act

89. The Regulatory Flexibility Act of 1980 (RFA)¹²⁷ generally requires a description and analysis of agency rules that will have a significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and that minimize any significant economic impact on a substantial number of small entities. The SBA Office of Size

¹²⁴ *Regulations Implementing the National Environmental Policy Act of 1969*, Order No. 486, 52 FR 47897 (December 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986-1990 ¶ 30,783 (1987).

¹²⁵ 18 CFR 380.4 (2013).

¹²⁶ 18 CFR 380.4(a)(1) and (5) (2013).

¹²⁷ 5 U.S.C. 601-612 (2012).

Standards develops the numerical definition of a small business.¹²⁸ The SBA has established a size standard for natural gas pipeline companies transporting natural gas, stating that a firm is small if its annual receipts are less than \$25.5 million.¹²⁹

90. Golden Triangle disagrees with the Commission's statement that the proposed rule would not have a significant economic impact on a substantial number of small entities. We respond to Golden Triangle in Section B.5 above. We modify the small business impact below based on the revised estimates used in the information collection section above.

91. The new regulations impose requirements only on natural gas companies subject to the Commission's jurisdiction, the majority of which are not small businesses. Most companies regulated by the Commission do not fall within the RFA's definition of a small entity. Approximately 165 companies – nearly all of them large entities – would be potential respondents subject to data collection FERC-577 reporting requirements. For the year 2011 (the most recent year for which information is available), only 15 companies not affiliated with larger companies had annual revenues of less than \$25.5 million. Moreover, the reporting requirements should have no meaningful economic impact on companies – be they large or small – subject to the Commission's

¹²⁸ 13 CFR 121.101 (2013).

¹²⁹ 13 CFR 121.201, Subsector 486 (2013); *see* SBA's Table of Small Business Size Standards, effective March 26, 2012, *available at*: http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.

regulatory jurisdiction. The Commission estimates that the revised cost per small entity is \$17,568 per year. The Commission does not consider the estimated impact per entity to be significant. Accordingly, pursuant to section 605(b) of the RFA, the Commission certifies that this Final Rule should not have a significant economic impact on a substantial number of small entities.

VI. Document Availability

92. 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, NE, Room 2A, Washington DC 20426.

93. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

94. User assistance is available for eLibrary and the FERC's website during normal business hours from FERC Online Support at 202-502-6652 (toll free at 1-866-208-3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. E-mail the Public Reference Room at public.referenceroom@ferc.gov.

VII. Effective Date and Congressional Notification

95. These regulations are effective [**insert date 60 days from publication in *Federal Register***]. 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. This rule is being submitted to the Senate, House, Government Accountability Office, and the Small Business Administration.

List of subjects

18 CFR Part 2

Administrative practice and procedure, and Reporting and recordkeeping requirements.

187 CFR Part 157

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

18 CFR Part 380

Environmental impact statements, and Reporting and recordkeeping requirements.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

In consideration of the foregoing, the Commission amends Parts 2, 157, and 380, Chapter I, Title 18, *Code of Federal Regulations*, as follows:

PART 2 – GENERAL POLICY AND INTERPRETATIONS

1. The authority citation for Part 2 continues to read as follows:

Authority: 5 U.S.C. 601; 15 U.S.C. 717-717z, 3301-3432; 16 U.S.C. 792-828c, 2601-2645, 42 U.S.C. 4321-4370h, 7101-7352.

2. Amend § 2.55 by inserting the following sentence after the last sentence in paragraph (a)(1) to read as follows:

§ 2.55 Definition of terms used in section 7(c).

* * * * *

(a) *Auxiliary Installations.*

(1) * * *

The auxiliary installations must be located within the existing or proposed certificated permanent right-of-way or authorized facility site and must be constructed using the temporary work space used to construct the existing or proposed facility (see Appendix A to this Part 2 for guidelines on what is considered to be the appropriate work area in this context).

* * * * *

3. Amend § 2.55 by revising paragraph (b)(1)(ii) to read as follows:

§ 2.55 Definition of terms used in section 7(c).

* * * * *

(b) *Replacement of facilities.*

(1) * * *

(i) * * *

(ii) The replacement facilities will have a substantially equivalent designed delivery capacity, will be located in the same right-of-way or on the same site as the facilities being replaced, and will be constructed using the temporary work space used to construct the existing facility (see Appendix A to this Part 2 for guidelines on what is considered to be the appropriate work area in this context);

* * * * *

4. Amend § 2.55 to add paragraph (c) to read as follows:

(c) *Landowner Notification.*

(1) No activity described in paragraphs (a) and (b) of this section that involves ground disturbance is authorized unless a company makes a good faith effort to notify in writing each affected landowner, as noted in the most recent county/city tax records as receiving the tax notice, whose property will be crossed or used as a result of the proposed activity, at least five days prior to commencing any activity under this section. For an activity required to respond to an emergency, the five-day prior notice period does not apply. The notification shall include at least: (i) a brief description of the facilities to be constructed or replaced and the effect the activity may have on the landowner's property; (ii) the name and phone number of a company representative who is knowledgeable about the project; and (iii) a description of the Commission's Dispute Resolution Division Helpline, which an affected person may contact to seek an informal resolution of a dispute as explained in section 1b.21(g) of the Commission's regulations

and the Dispute Resolution Division Helpline number.

(2) “Affected landowners” include owners of property interests, as noted in the most recent county/city tax records as receiving tax notice, whose property is directly affected (i.e. crossed or used) by the proposed activity, including all rights-of-way, facility sites (including compressor stations, well sites, and all above-ground facilities), access roads, pipe and contractor yards, and temporary work space.

5. Amend Appendix A to Part 2 to read as follows:

Appendix A to Part 2--Guidance for Determining the Acceptable Construction Area for Auxiliary and Replacement Facilities

These guidelines shall be followed to determine what area may be used to construct the auxiliary or replacement facility. Specifically, they address what areas, in addition to the permanent right-of-way, may be used.

An auxiliary or replacement facility must be within the existing right-of-way or facility site as specified by § 2.55(a)(1) or § 2.55(b)(1)(ii). Construction activities for the auxiliary or replacement facility can extend outside the current permanent right-of-way if they are within the temporary and permanent right-of-way and associated work spaces used in the original installation.

If documentation is not available on the location and width of the temporary and permanent rights-of-way and associated work spaces that were used to construct the original facility, the company may use the following guidance for the auxiliary installation or replacement, provided the appropriate easements have been obtained:

- a. Construction should be limited to no more than a 75-foot-wide right-of-way

including the existing permanent right-of-way for large diameter pipeline (pipe greater than 12 inches in diameter) to carry out routine construction. Pipeline 12 inches in diameter and smaller should use no more than a 50-foot-wide right-of-way.

b. The temporary right-of-way (working side) should be on the same side that was used in constructing the original pipeline.

c. A reasonable amount of additional temporary work space on both sides of roads and interstate highways, railroads, and significant stream crossings and in side-slope areas is allowed. The size should be dependent upon site-specific conditions. Typical work spaces are:

Item	Typical extra area (width/length)
Two lane road (bored)	25-50 by 100 feet.
Four lane road (bored)	50 by 100 feet.
Major river (wet cut)	100 by 200 feet.
Intermediate stream (wet cut)	50 by 100 feet.
Single railroad track	25-50 by 100 feet.

d. The auxiliary or replacement facility must be located within the permanent right-of-way or, in the case of nonlinear facilities, the cleared building site. In the case of pipelines this is assumed to be 50 feet wide and centered over the pipeline unless otherwise legally specified.

However, use of the above guidelines for work space size is constrained by the physical evidence in the area. Areas obviously not cleared during the original

construction, as evidenced by stands of mature trees, structures, or other features that exceed the age of the facility being replaced, should not be used for construction of the auxiliary or replacement facility.

If these guidelines cannot be met, the company should consult with the Commission's staff to determine if the exemption afforded by § 2.55 may be used. If the exemption may not be used, construction authorization must be obtained pursuant to another regulation under 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. 717-717z.

2. Amend § 157.202 by revising paragraph (b)(2)(i) to read as follows:

§ 157.202 Definitions.

* * * * *

(b) Subpart F definitions. For purposes of this subpart:

* * *

(2)(i) Eligible facility means, except as provided in paragraph (b)(2)(ii) of this section, any facility subject to the Natural Gas Act jurisdiction of the Commission that is necessary to provide service within existing certificated levels. Eligible facility also includes any gas supply facility or any facility, including receipt points, needed by the

certificate holder to receive gas into its system for further transport or storage, and interconnecting facilities between transporters that transport natural gas under part 284 of this chapter. Further, eligible facility includes main line, lateral, and compressor 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, or because they will not satisfy the location or work space requirements of § 2.55(b). Replacements must be done for sound engineering purposes. 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. Eligible facility also includes auxiliary installations and observation wells which do not qualify under § 2.55(a) of this chapter because they will not satisfy the location or work space requirements of § 2.55(a).

3. Amend § 157.203 by revising paragraph (d)(3)(i) to read as follows:

§ 157.203 Blanket certification.

* * * * *

(d) Landowner Notification.

* * *

(3) Exceptions.

(i) No landowner notice is required for replacements which would have been done under § 2.55 of this chapter but for the fact that the replacement facilities are not of the

same capacity as long as they meet the location requirements of § 2.55(b)(1)(ii) of this chapter and do not cause any ground disturbance; or any replacement done for safety, DOT compliance, environmental, or unplanned maintenance reasons that are not foreseen and that require immediate attention by the certificate holder.

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PART 380 – REGULATIONS IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT

1. The authority citation for Part 380 continues to read as follows:

Authority: 42 U.S.C. 4321-4370h, 7101-7352; E.O. 12009, 3 CFR 1978 Comp., p. 142.

2. Redesignate § 380.15 paragraphs (c), (d), (e), and (f) as paragraphs (d), (e), (f), and (g).

3. Amend § 380.15 to add paragraph (c) to read as follows:

§ 380.15 Siting and maintenance requirements.

* * * * *

(c) Landowner Notification.

(1) No maintenance activity that involves ground disturbance is authorized unless a company makes a good faith effort to notify in writing each affected landowner, as noted in the most recent county/city tax records as receiving the tax notice, whose property will be crossed or used as a result of the proposed activity, at least five days prior to commencing any activity under this section. For an activity required to respond to an emergency, the five-day prior notice period does not apply. The notification shall

include at least: (i) a brief description of the activity and the effect the activity may have on the landowner's property; (ii) the name and phone number of a company representative who is knowledgeable about the project; and (iii) a description of the Commission's Dispute Resolution Division Helpline, which an affected person may contact to seek an informal resolution of a dispute as explained in section 1b.21(g) of the Commission's regulations and the Dispute Resolution Division Helpline number.

(2) "Affected landowners" include owners of property interests, as noted in the most recent county/city tax records as receiving tax notice, whose property is directly affected (i.e. crossed or used) by the proposed activity, including all rights-of-way, facility sites (including compressor stations, well sites, and all above-ground facilities), access roads, pipe and contractor yards, and temporary work space.