

notice and without project cost constraints, when immediate action is required to restore service in an emergency due to a sudden unanticipated loss of natural gas or capacity for protection of life or health or for maintenance of physical property. In addition, the Commission is revising reporting requirements so that a natural gas company acting under part 157 in responding to an emergency would submit a report describing intended actions to the Commission in advance of commencing construction, rather than reporting actions taken under part 157 after the fact, as is currently the case. The Commission revises part 157 to state that the requirement to provide landowners with 30-day prior notice is met if all affected landowners grant easements. The Commission is also amending part 153 to specify that the regulatory revisions related to emergency reconstruction will apply to facilities subject to Section 3 of the Natural Gas Act (NGA). Finally, the Commission is amending part 375 of its regulations to delegate authority to waive certain landowner notice requirements and to make certain judgments in the field regarding the construction and operation of gas facilities. An important objective of the proposed rule is the reconciliation of the Commission's regulatory responsibilities under its enabling statutes and federal environmental and safety laws with the need to protect persons and property.

Background

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

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

3. At the conference, Commission and OPS staff provided an overview of current regulatory processes and presented examples of recent natural gas emergencies. Conference participants—representing federal, state, and local agencies, energy industry sectors, trade groups, and interested individuals—suggested various means to speed the reconstruction of interstate gas facilities, including: revising existing legislative mandates, revising Commission regulations, and enhancing coordination among federal, state, and local entities. A transcript of the conference and the comments subsequently submitted are contained in the record in Docket No. AD02-14-000.³

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

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

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

Comments in Response to the January 2003 NOPR

5. Timely comments in response to the NOPR were filed by the American Gas Association (AGA); Duke Energy Gas Transmission (Duke); INGAA; KM Pipelines;⁴ KO Transmission Company (KO Transmission); MidAmerican Energy Company (MidAmerican); NiSource Pipelines (NiSource);⁵ Northern Natural Gas Company (Northern Natural); the Process Gas Consumers Group (Process Gas Consumers); the Public Service Commission of the State of New York (New York PSC); and Williston Basin Interstate Pipeline Company (Williston Basin). Untimely comments were submitted by the United States Department of the Interior, Fish and Wildlife Service (FWS) and the Public Utilities Commission of Ohio (Ohio PUC), which we accept, as to do so will not delay, disrupt, or otherwise prejudice this proceeding.

Revisions to the Commission's Regulations

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

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

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

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