

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

7. Almost all interstate gas pipelines now hold part 157 blanket certificates that permit the automatic construction, operation, abandonment, replacement, and rearrangement of certain “eligible facilities.” To facilitate pipelines’ capability to act expeditiously to respond to an emergency,⁷ we propose to expand the scope of “eligible facilities” to include mainline facilities that require a new right-of-way, and system modifications such as adding compression, that could compensate for impaired gas flows. Further, for emergency reconstruction, we propose to lift the current \$21 million project cost limit and forego the prescribed 45-day public notice requirement.⁸ In addition to the 45-day public notice, a gas company acting under blanket authority is required to make a good faith effort to notify all affected landowners 30 days prior to commencing construction or at the time it initiates easement negotiations. We retain this landowner notification requirement, but as stated in the January 2003 NOPR, once a company has contacted landowners, we will consider a company request to waive the remainder of the 30-day landowner notice period.⁹

Defining an Emergency

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

not present a direct threat to life, health, or property.

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

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

Commission Response

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

12. To emphasize that an emergency be precipitated by events which a company could not be expected to predict or prepare for, we retain both

“sudden” and “unanticipated.” We note this definition of emergency is consistent with that of § 284.262(2) of our regulations, which also defines an emergency as a “sudden unanticipated loss of natural gas supply or capacity.”

Eligible Facilities

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

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

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

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

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

17. INGAA requests the Commission specify that when replacing damaged facilities, a pipeline need not duplicate the damaged facilities, but may make use of components of “substantially similar capacity.” INGAA points out that emergency repairs can be made most rapidly by using supplies readily available in inventory. INGAA therefore

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

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

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

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