

requests regulatory leeway to use substantially similar accessible supplies when duplicate replacement supplies are not readily available. INGAA observes that § 2.55(b)(ii) of the Commission's regulations already specifically accepts the substitution of approximately equivalent components.

Commission Response

18. Our aim is to enable a company to recover from an emergency as soon as possible, and we assume recovery will be quickest (and most cost effective) when a company can repair or replace damaged facilities within the original footprint, since such efforts can be expected to minimize the need for easements and environmental approvals. Thus, we expect that reconstruction within the right-of-way will, when possible, be preferred. However, although an existing right-of-way may remain accessible, we can envision circumstances where new construction along a new right-of-way could be the more rapid means to restore service. We therefore want to offer pipelines options when rebuilding, and for this reason, we will not adopt the FWS proposal that we permit pipelines to use the new blanket authorization to reconstruct on a new right-of-way only when the existing right-of-way is unavailable. We clarify that although the NOPR emphasized the applicability of expanded emergency blanket authority to reconstruct outside of an existing right-of-way, we also intend for emergency blanket authorization to apply to reconstruction within the existing right-of-way. Consequently, we find no need to alter the revised regulatory language as suggested by INGAA, Duke, and Williston Basin.

19. As proposed, we will add "the modification of facilities to rearrange gas flows or increase compression" to § 157.202(b)(2)(i), as we find this phrase better expresses our intent to make it possible for a damaged pipeline to rely on the new emergency blanket provisions to modify its system as needed to restore service. We are concerned that absent this additional description of potential authorized actions, the emergency blanket provisions could be construed as restricting a pipeline to either the repair or replication of damaged facilities, with the sole exception of rerouting a mainline. Such an interpretation could constrain a pipeline's emergency recovery efforts, thereby prolonging service shortfalls, and thereby limit the utility of the new blanket regulations and undermine our aim to speed recovery efforts. Thus, if a pipeline

finds it is able to restore interrupted service faster by adding new facilities—such as compression at an undamaged site or equipment to enhance storage withdrawals—than by replacing or repairing damaged facilities, we want pipelines to have emergency blanket authority to add such facilities. Further, if a pipeline can safely adjust operating parameters or can rearrange facilities on its system in order to compensate for a service interruption, the emergency blanket regulations should permit such modifications. Accordingly, we will add "the modification of facilities to rearrange gas flows or increase compression" to those actions permitted under emergency blanket authority. This revision may be interpreted as encompassing the redirection of gas flows, as requested by the New York PSC.

20. We note that in an emergency, pipelines are to focus on the immediate restoration of services essential for protection of life or health or for maintenance of physical property; thus, "the modification of facilities" applies only those modifications devoted to this priority. In reviewing pipelines' advance notice of emergency reconstruction, we will consider whether the described activities are consistent with this priority.

21. INGAA and Duke propose to employ emergency authorization to restore pre-existing service. We stress that unless a company's inability to fulfill its service contracts presents a direct threat to life, health, or property, no emergency exists, and where no emergency exists, it would be inappropriate to invoke emergency authority. We reiterate our observation in the NOPR that this "enlargement in the scope of permissible actions under part 157, subpart F, is restricted to actions necessary to restore service after an interruption due to an emergency event," and does not apply to "circumstances [that] would not qualify as an emergency."¹⁰ However, provided an incident causing an interruption in service qualifies as an emergency, we clarify that a company may rely on the expanded blanket emergency provisions to replace or rearrange facilities in order to reinstate service up to the level it previously provided.

22. We believe it is reasonable to permit a pipeline to employ the most readily available materials in an emergency. The public interest in restoring service should not wait on the delivery of an order for new materials that match the damaged facilities. Accordingly, we clarify that in an

emergency a pipeline may use components of substantially similar capacity. The current regulations implicitly permit such substitutions. As INGAA comments, the 'substantially similar capacity' allowance is the § 2.55(b)(ii) standard."¹¹ Section 157.202(b)(2)(i) of our regulations expands upon this, allowing "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." Provided replacement facilities that differ from the original facilities result in no more than an incidental increase in capacity, we expect such replacements will be acceptable under the expanded emergency blanket certificate authorization. We note that the § 157.207 report of intended action under emergency blanket authority should serve, *inter alia*, to inform the Commission of circumstances that merit the use of replacement facilities that are not a one-to-one match for a system's existing facilities.

Notice Requirements

23. INGAA, Duke, and NiSource support the proposal to omit the § 157.203(a) 45-day public notice period for emergency reconstruction, and urge the Commission to similarly exempt pipelines from the § 157.203(d) 30-day landowner notice requirement. Noting the Commission's stated willingness to consider requests to waive the 30-day landowner notice, the parties nevertheless view this approach as uncertain and time consuming, and favor omitting the § 157.203(d) landowner notice. INGAA and Duke contend this notice is unnecessary, as it is duplicative of a pipeline's obligation to either obtain voluntary easements from landowners or obtain easements through condemnation proceedings.

24. Northern Natural believes that in an emergency that threatens life, health, or property, the public interest in prompt remedial action should outweigh the landowners' interest in notification.¹² Therefore, Northern Natural recommends that the Commission modify § 157.203(d)(3) to exclude landowner notice in an emergency; with emergency construction limited to the minimal disturbance needed to restore service and to landowners directly impacted. Alternatively, Northern Natural suggests that landowner notification and

¹¹ Specifically, § 2.55(b)(ii) states that "replacement facilities will have a substantially equivalent designed delivery capacity."

¹² Northern Natural speculates that in an emergency, property owners may be unavailable and communications unreliable.

¹⁰ FERC Stats. & Regs. ¶ 32,567, at 34,683.