

construction be allowed to take place concurrently.

25. Duke, Northern Natural, and KM Pipelines are concerned that efforts to negotiate in good faith with landowners to obtain easements prior to exercising eminent domain authority could delay reconstruction. Recognizing that the mechanics and pace of this judicial process are outside of the Commission's domain, Duke asks the Commission to "acknowledge \* \* \* the need for and benefit of an expedited eminent domain process" in an emergency, so as to encourage courts to facilitate expedited entry onto lands and Congress to modify statutory limitations. Northern Natural similarly urges the Commission to coordinate regulatory and statutory changes with other agencies to expand powers of eminent domain and blanket waivers, and "employ its maximum allowable authority to expedite the process in an emergency." KM Pipelines encourage the Commission to seek legislative revisions so that in an emergency, environmental statutes and related regulations may be waived to allow for immediate reconstruction. KM Pipelines propose that such revisions provide for the Commission to declare an emergency exists, after which pipelines will be able to obtain an expedited court condemnation order to gain access to land, with a separate determination on compensation to follow at a later date.

#### Commission Response

26. It is necessary to find the proper balance between facilitating the immediate restoration of service in an emergency, via a new right-of-way if necessary, and safeguarding the due process rights of affected landowners, but we believe eliminating landowner notice shifts the balance too far. The landowner notice requirements protect the public interest by ensuring that property rights are respected and that any necessary new easements adhere to applicable state procedures.<sup>13</sup> Thus, we will retain the § 157.203(d) requirement that a pipeline make a good faith effort to provide all affected landowners with 30-day notice. We note that regardless of the Commission's regulations, landowners must be contacted for the purpose of obtaining an easement, and this contact may serve as notice for the purpose of complying with § 157.203(d) of our regulations.

27. We suggest that the greater the magnitude and urgency of an emergency, the more persuasive

pipelines may be in negotiating voluntary easements. Involuntary easements compelled through the exercise of the right of eminent domain are subject to state law, and we suggest that the nature of the emergency may influence the willingness of state authorities to intervene to expedite their procedures. In view of this, we are not willing to forego prior notice to landowners, as requested, in its entirety.

28. We nevertheless believe that modifications may be made to the landowner notice requirements to speed the process while retaining relevant landowner protections. Under § 157.203(d) of our current regulations, a landowner, once notified in accordance with § 157.6(d)(2) and § 157.203(d)(2) of our regulations, may waive the 30-day aspect of the prior notice requirement. We will expand this and revise § 157.203(d) to state that "For activity required to restore service in an emergency, the 30-day prior notice period is satisfied in the event a company obtains all necessary easements." We believe that once a company has reached voluntary agreements with all landowners affected by a new right-of-way, there is no remaining landowner interest to be protected by awaiting the expiration of the remainder of the 30-day prior notice period. In addition, we will provide the Director of the Office of Energy Projects (OEP) with the authority to waive landowner notice requirements, as necessary or appropriate, by adding a new § 375.308(w)(5), to state that the OEP Director, or the Director's designee, has the delegated authority to take appropriate action on "Requests for waiver of the landowner notification requirements in § 157.203(d) of this chapter."

29. We agree with those comments that stress the need for pipelines to be able to obtain new right-of-way to build around damaged portions of pipe. That said, as commenters observe, the mechanics and pace of the process of obtaining a new easement by right of eminent domain are beyond the scope of this Commission's jurisdiction.<sup>14</sup> Consequently, we are unable to commit to effecting changes in other agencies' regulations or our own statutory authority. We nevertheless can and do commit to working with local, state, and federal authorities to coordinate and expedite emergency reconstruction efforts.

<sup>14</sup> We specifically requested views on the need for further or broader action by the Commission or Congress to inform our consideration of changes we might make to ensure the continued integrity of the energy infrastructure.

#### Advance Report of Emergency Reconstruction Activities

30. In the NOPR, we noted that under the existing § 157.207 reporting requirements, companies submit a retrospective annual report describing the projects completed under blanket authority during the prior year. Because the expanded emergency blanket authority provisions omit the requirement that companies give 45-day prior notice for public comment on projects costing more than \$7.5 million, we modified this section to require that companies intending to rely on emergency blanket authority submit an advance report to the Commission describing their preparations and plans before commencing reconstruction.

31. NiSource does not object to notifying the Commission prior to proceeding with emergency reconstruction activities, as long as the Commission acknowledges and accepts that the initial description of the problem and remedial plan may be inexact and subject to change in light of the incomplete information and urgency inherent in an emergency.

32. Northern Natural observes that § 260.9(b) allows companies to deliver notices of gas service disruptions to the Commission "by any electronic means" and asks that if the Commission retains an emergency advance report requirement, it should permit pipelines to deliver this report by electronic means. Further, Northern Natural seeks clarification that the advance report filing applies only to emergency activities under the proposed expanded blanket authority, and will not be interpreted to apply to activities that come under current no-notice blanket authority. Northern Natural worries that an emergency may disrupt communications between pipelines and governmental agencies.

#### Commission Response

33. We accept that in attempting to restore service in response to an emergency, a pipeline's preparation and planning will not be as thorough and predictable as would be the case in describing a proposed non-emergency construction project. Accordingly, we do not expect to hold a pipeline to the precise parameters set forth in the advance report describing its intended emergency reconstruction.

Further, while we will expect a pipeline to submit as complete and accurate a report as is practical, as stated in the NOPR, we recognize that it will not be possible "to supply all the information routinely set forth in a

<sup>13</sup> Note that landowner notice is not required under the exemptions specified in § 157.203(d)(3) of the Commission's regulations.