

facilities, including authority to design and implement additional or alternative measures and stop work authority.”

43. Recognizing that recovery from a gas emergency will call for actions and authorizations by entities other than this Commission, comments plead for a plan for inter-governmental interaction. The nature of an emergency as a sudden unanticipated event makes advance identification of the relevant authorities that will need to be involved in responding to an emergency, and the role each will play, impractical. Nevertheless, we can name those regional entities that are most likely to be involved in recovery efforts, and as a first step to facilitate communication and coordination, we will make contact information for these entities available via our Web site.¹⁹

44. FWS requests clarification with respect to § 157.206 of our regulations. As stated in the NOPR, the applicable conditions set forth in § 157.206(b) describe environmental requirements that must be satisfied as a prerequisite to construction under both the existing blanket authority and the expanded emergency blanket authority. FWS suggests that the Commission’s certification authorization could incorporate an emergency action plan that would include surveying alternative routings. To a certain extent, we already do so in our NEPA consideration of alternatives to a proposed project. We agree with the principle that it is prudent to be prepared; however, since there is no way to predict if, when, or where damage might occur along the vast array

of interstate gas facilities, we find it impractical to attempt to undertake an environmental inventory of possible alternative routing in advance of an actual incident. However, we agree with FWS that reconstruction efforts can be expedited by having relevant entities’ contact information readily available, and to this end, we will compile, post, and update such information on our Web site.

Self-Implementation v. Prior Authorization

45. As proposed, under the expanded emergency blanket authority, a pipeline can invoke the expanded blanket authority, inform the Commission of its intended emergency reconstruction activities, and unless the Commission objects, go forward. In the NOPR we asked whether affirmative Commission authorization or a short review period (e.g., three days) should be required before a pipeline would be permitted to act under emergency blanket authority.

46. INGAA, Duke, Northern Natural, KM Pipelines, Williston Basin, and KO Transmission state that to be able to respond as rapidly as possible in an emergency, blanket authorization for construction outside of an existing right-of-way should be self-implementing. These parties see no need for the Commission to first verify that an emergency exists, and then approve a pipeline’s proposed emergency response, before permitting a pipeline to act.

47. INGAA believes that there is no cause for the Commission to assess a pipeline’s reconstruction proposal for a period of time before breaking ground, because the Commission may rely on a representative on site to oversee repairs. Williston Basin agrees, and adds that the on-site Commission representative, in conjunction with the advance report describing emergency activities, should provide the Commission with adequate information and oversight.

48. Instead of granting pipelines self-implementing authority to undertake emergency repairs outside an existing right-of-way, FWS and the Ohio PUC propose the Commission should first declare that an emergency requiring immediate action exists, with the Commission’s declaration serving as the trigger and authorization for emergency reconstruction activities. FWS recommends that the Commission have five calendar days from receiving notice of an emergency interruption in service to decide if circumstances merit rebuilding along a new right-of-way.

49. KO Transmission recommends allowing pipelines to commence reconstruction prior to contacting the

Commission.²⁰ If an emergency incident occurs when Commission offices are closed, KM Pipelines propose permitting a pipeline to go forward with construction, with a report describing its remedial action to be submitted when Commission offices reopen. Alternatively, KN Pipelines suggest the Commission provide for some means of filing a report on emergency reconstruction when its offices are closed.

50. Instead of submitting a prospective plan of reconstruction to the Commission, the Process Gas Consumers Group suggests the Commission designate a contact person with the authority to immediately approve or disapprove emergency reconstruction activities. In the event of disapproval, the company could then submit its plan to the Commission, with the Commission taking up to three days to review the plan and the rationale for initial disapproval by the designated staff member.

51. NiSource does not object, in principle, to obtaining Commission confirmation that an emergency exists, as long as doing so does not delay the pipeline’s response. To this end, NiSource suggests the Commission create a “rapid response” staff, capable of confirming that an emergency exists, assisting in formulating a plan to reconstitute service, and providing waivers as warranted—all within a 24- to 36-hour time frame. NiSource contends that involving the Commission in this manner could preclude after-the-fact challenges to the pipeline’s emergency actions.

52. MidAmerican and the New York PSC endorse the proposal for prior notice to the Commission. The New York PSC believes it is prudent for the Commission to verify that the circumstances in fact constitute an actual emergency, and to assess the scope and impact of the proposed response. MidAmerican is concerned that if no-notice self-implementation is permitted, pipelines might take the opportunity to upgrade, rather than merely replace or repair, their damaged facilities. MidAmerican adds that in view of the public interest in a rapid restoration of interrupted service, in no circumstances should the Commission’s review of a pipeline’s advance report filing take more than three days.

²⁰ Specifically, KO Transmission suggests adding the qualification “or currently underway,” at the end of the proposed § 157.207(i) requirement that pipelines submit reports “describing emergency activities to be undertaken;” i.e., effectively eliminating reporting in advance of commencing reconstruction.

¹⁹ FWS, in response to the NOPR, invites the Commission to contact its “appropriate regional office to expedite and facilitate a coordinated emergency response,” which we expect to do. With respect to intergovernmental coordination in an emergency, as discussed in the NOPR, we expect the Department of Energy’s Office of Energy Assurance to play a role in overseeing energy industry equipment stockpiles and mutual aid pooling and exchange programs; identifying critical facilities, equipment, and personnel; establishing communications protocol; and developing security and contingency plans. In addition, we anticipate the Department of Homeland Security will coordinate response resources in the event of a terrorist attack or other disaster. Further, pursuant to § 16(a)(1) of the Pipeline Safety Improvement Act of 2002, an interagency committee, headed by CEO, with the Commission among its members, is charged “to develop and ensure implementation of a coordinated environmental review and permitting process in order to enable pipeline operators to commence and complete all activities necessary to carry out pipeline repairs” expeditiously. To the extent changes to the Commission’s rules may be necessary to address safety concerns, we expect the interagency committee called for by this Act will provide a vehicle for identifying the relevant issues. We believe that this Commission can best support intra- and inter-governmental and industry coordination by contributing to and participating in these efforts.