

Commission Response

53. In view of the comments, we will limit the revisions to our blanket certificate regulations to those proposed in the NOPR, and not require either Commission affirmation that emergency conditions exist or a time-out interval during which we review a pipeline's proposed emergency response. In effect, we will allow pipelines self-implementing authority to act to immediately reconstitute service for the protection of life or health or for maintenance of physical property in an emergency due to a sudden unanticipated loss of natural gas or capacity. We retain the requirement that a pipeline submit an advance report of intended emergency reconstruction activities. In part, advance notice in an emergency serves the same purpose as the public notice requirement does for construction under a blanket certificate in a non-emergency in that it enables the Commission to confirm that the planned activities are consistent with environmental, safety, and land acquisition requirements. In addition, the Commission can consider whether the planned activities are narrowly tailored to restoring service as soon as possible and ensure that reconstruction will not include any system modifications that are not essential to alleviate threats to life, health, or property. Once an advance report is submitted, a company may proceed with its emergency reconstruction activities. Our consideration of the company's notice of planned reconstruction, and identification of any necessary modifications, will proceed concurrently with reconstruction activities.

54. In an emergency, in the interests of safety and environmental protection, a company acts immediately to limit damage and stabilize its system, and the new advance report provision is unrelated to actions taken in the context of this initial emergency response. The new advance report provision only comes into play after a company has isolated damaged facilities, assessed the status of its system, and formed a plan for recovery. Because currently effective provisions already authorize companies to act in an emergency and are effectively self-implementing, asking a company to describe how it intends to restore interrupted service in no way inhibits companies' existing capability (and obligation) to respond promptly to threats to the integrity of their facilities.²¹ We have yet to encounter a

situation whereby a company is prevented from immediately undertaking essential action in response to an emergency because Commission offices are closed. Hence, we do not anticipate a need to provide a means to present an advance report of planned reconstruction during non-business hours. However, if we find a delay in communicating with the Commission has inhibited urgently needed action, whether it be action pursuant to this expanded emergency blanket authority or in another time-critical context, we will seek a means to remedy any such delay and can do so in a way that supplements this rule.

Range of Reconstruction Activities

55. INGAA and Duke propose the Commission modify part 153 to specifically apply the emergency reconstruction provisions to import, export, and LNG terminal facilities. INGAA explains that because these facilities are subject exclusively to NGA Section 3, and not NGA Section 7, such facilities would be unaffected by the proposed expansion of the part 157 blanket certificate regulations.

56. MidAmerican would have the Commission expand the scope of the proposed rule to include not only authority for a pipeline to rebuild its own damaged facilities, but also for a damaged pipeline to make use of undamaged (or less damaged) facilities of another pipeline in the same region, or where more efficient in terms of time and cost, undertake new construction on another pipeline system's facilities to provide additional capacity to meet its own customer needs.

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57. We strive to respond with dispatch when any portion of the energy infrastructure is damaged, including facilities subject exclusively to NGA Section 3. We have adopted and applied certain NGA Section 7 conditions governing construction, operation, and rates to ensure that NGA Section 3 facilities are in the public interest, and we will do so in this case to enable timely repairs in the event of damage to such facilities.²² To this end, we add § 153.13, to state that "The provisions of

blanket emergency authority will only be called upon in extreme and unambiguous emergency circumstances. Consequently, we do not expect companies to invoke blanket emergency authority unless it is the only regulatory option to restore service for the protection of life or health or for maintenance of physical property.

²² This ensures that in an emergency, LNG facilities that are subject exclusively to NGA Section 3, or subject exclusively to NGA Section 7, or subject to both sections, can employ the expanded emergency blanket provisions.

subpart F of part 157 of this chapter that permit reconstruction for the purpose of immediately restoring interrupted service for the protection of life or health or for maintenance of physical property in an emergency due to a sudden unanticipated loss of gas supply or capacity are applicable to facilities subject to Section 3 of the Natural Gas Act."

58. We are not persuaded that there is a need for the Commission to coordinate multiple pipelines' cooperative response to an emergency, as MidAmerican proposes. We expect that the existing part 284, subpart I, regulations governing emergency gas sale, transportation, and exchange transactions, are adequate to enable one pipeline to rely on another to assist to respond to an emergency gas shortfall.²³

Declaration of an Emergency

59. In the NOPR, we asked if expanded emergency blanket authority should be restricted, and apply only in response to emergencies due to natural disasters or deliberate damage. INGAA, AGA, Duke, Northern Natural, Process Gas Consumers Group, Shell Gas Transmission, NiSource, Williston Basin, the New York PSC, and KO Transmission maintain that regardless of the cause of a sudden unanticipated loss of gas or capacity, the effect is the same, namely, an urgent need to restore service. Accordingly, they ask that the Commission clarify that the proposed revisions will apply regardless of whether an emergency is the result of a natural disaster, equipment failure, human error, accident, or deliberate damage.

60. MidAmerican would restrict the applicability of the expanded blanket authority to "an emergency situation or act of deliberate damage." For reconstruction requiring a new right-of-way, FWS would restrict expanded blanket authority specifically to natural disasters and acts of deliberate damage.

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61. Comments convince us that it is appropriate to focus not on cause, but on effect. Consequently, we will not restrict the expanded blanket authority to emergencies attributable to deliberate damage. Besides, in the aftermath of an incident that interrupts service, it could prove counterproductive to have to first

²¹ Given gas companies' existing authority to act to stabilize their system's facilities after a disruption in service, we expect the expanded

²³ A gas disruption so severe and so sustained that remedial actions under the Commission's regulations prove unavailing, or conditions that cripple the Commission's or the industry's communication capabilities, would likely constitute a natural gas supply emergency, and trigger application of the Defense Production Act, 50 U.S.C. App. 2061, *et seq.*, which provides for federal coordination and direction.